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Charters &c to the Burgesses
of Liverpool by King William
1st. &c.

Bought from Wm C. Ells lib 87/36.

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THE
CHARTER,

GRANTED TO THE
BURGESSES OF LIVERPOOL,

BY
WILLIAM III.

With Notes and Explanatory Remarks on the same;

ALSO, THE
CHARTER
OF

GEORGE II.

The Order of Common Council, and the Petition for obtaining that
Charter, with the Report of the Attorney and Solicitor General
thereon: Opinion of Counsel respecting the Power of making
By-laws, and an Extract from the Act of 2 George III.

TO WHICH IS ADDED

A SUMMARY

OF THE

- Proceedings of the Burgesses and Common Council from the Reign of Elizabeth to the present time, with an Epitome of the two Trials at Lancaster between the Corporation and the Common Council.

LIVERPOOL,

Printed for the Editor, by Egerton Smith and Co.

AND SOLD BY THEM, AND BY W. ROBINSON, CASTLE-STREET, AND THE REST
OF THE BOOKSELLERS.

1810.

THE

CHARTER

BY THE



OF THE

LIBRARY

TO THE
BURGESSES AT LARGE
OF THE
BOROUGH OF LIVERPOOL,
THE FOLLOWING PAGES
ARE
RESPECTFULLY INSCRIBED,
BY
THE EDITOR.

PREFACE.

THE design of the following Publication is to introduce the Burgesses at large to an acquaintance with the constitution, by which the affairs of the body corporate ought to be regulated.

This borough was originally incorporated by the name of Mayor, Bailiffs and Burgesses, to them the Charters were granted, and to them belong all the rights and privileges resulting therefrom; yet a select body have, for a long time past, contrary to the express words of the Charter, claimed and exercised the legislative authority, and have had the management of the Corporation revenues, without publicly accounting to the Burgesses for the same.

The rights of the Burgesses have been recognized and confirmed by the solemn verdicts of

two juries, and although the further prosecution of their claims may be for the present suspended, yet the time is, probably, not far distant, when they shall be re-instated in those rights of which they are now deprived.

The Burgesses are empowered by the Charter of King William to chuse their Chief Magistrate, this right they annually exercise, but it must strike the most inattentive observer that their power of election is merely nominal, for as long as the Chief Magistrate must be chosen from the Common Council, and the Common Council choose their own members independent of the Burgesses at large, *they* more than nominally elect the Mayors. The freemen indeed vote, and upon their shoulders the individual is borne into the seat of mayoralty; yet it might sometimes happen, that among the different candidates for this office not one of them would be chosen, if the Burgesses had the power of nomination as well as of giving their suffrages.

It is of great importance that laws should not be contravened with impunity, for in that case they rather abet, than prevent, crimes; but in order that a due observance may be exacted, it is necessary that laws should be made by a competent authority. Mr. J. Heywood, on the motion for a third trial, in the Court of King's Bench, said "the Common Council have never in any one instance asserted by process of law, their right of making by-laws, except in one case, (that of Fazakerley) in which they failed" (see Report *p.* 353.) If this continues to be the case, the consequences are but too obvious.

To the Translation of the Charter and Explanatory Remarks upon it, which were published some years ago, are added other important documents, with further remarks on the Charters, &c. the resolutions and by-laws passed in Common Hall during Mr. Sparling's mayoralty, and an abridgment of the trials which were consequent thereon. The Editor

has endeavoured to connect, in as clear and concise a manner as he was able, the arguments of counsel on both sides.

The Editor acknowledges himself indebted to a writer in Dr. Aikin's Description of the country round Manchester for some excellent remarks which he has taken the liberty of incorporating, and which, had they been regularly copied, should have been referred to in their proper place.

To the Burgesses at large the Editor flatters himself the following pages will be acceptable. It is their cause he desires to serve by it; uninfluenced by any party view, and free from any sinister motive. What he wishes for them and himself, as Burgesses of Liverpool, is, **THE CHARTER, THE WHOLE CHARTER, AND NOTHING BUT THE CHARTER.**

THE
CHARTER

WILLIAM THE THIRD.

William the Third, by the Grace of God, of England, Scotland, France, and Ireland, King, defender of the Faith, &c. to all to whom these our present letters shall come, greeting:

WE have inspected certain Letters Patent under the Great Seal of England, bearing date at Westminster, the fourth day of July, in the second year of the reign of our most beloved Grandfather CHARLES the first, late King of England, &c. made and granted to the Mayor, Bailiffs, and Burgesses of the Town of Liverpool, in the County Palatine of Lancaster, in these words:

“CHARLES, by the Grace of God, of England, Scotland, France, and Ireland, King, defender of the Faith, &c. to all unto whom these present letters shall come, greeting: whereas our Town of Liverpool, in our County Palatine of Lancaster; is an ancient and populous town, and an ancient and the sole port in our said county palatine of Lancaster; and the Mayors, Bailiffs, and Burgesses of the said Town, from time whereof, the memory of man is not to the contrary, have had, used, and enjoyed divers liberties, franchises, immunities, and preeminences, as well by reason of divers Charters and Letters Patent of sundry of our progenitors and ancestors, late Kings and Queens of England, to them and their predecessors, by the name of Mayor, Bai-

B

made a body
corporate, by
the name of
Mayor, Bail-
iffs, and Bur-
gesses of Li-
verpool.

iffs, and Burgesses of the Town of Liverpool, in the County of Lancaster, or by some other name or some other names heretofore made and granted, as by reason and colour of sundry prescriptions and customs in the same town used and accustomed: And Whereas our beloved Subjects, the Mayor, Bailiffs, and Burgesses of the same town have most humbly besought us, that we would exhibit and extend our royal favour and munificence to the same Mayor, Bailiffs, and Burgesses; and that we, for the better rule, government, and advantage of the same town and said port, by whatsoever name of Corporation, or whatsoever names of incorporation, the Mayor, Bailiffs, and Burgesses of the same town of Liverpool were before this incorporated, and whether heretofore they were incorporated or not, would vouchsafe by our Letters Patent, to make, reduce, create, and confirm them into one body corporate and politic by the name of Mayor, Bailiffs, and Burgesses of the town of Liverpool, in such manner as to us shall seem most expedient; (1) we therefore willing that henceforward for ever in the said town and port should be had continually (2) one certain and undoubted manner, of and for the keeping of the peace, and rule and government of our people therein; and that the town and port aforesaid, henceforward for ever may be and remain a town and port of peace and quiet, to the dread and terror of evil doers, and the reward of the good; and that for the future they may be enabled better to keep our peace, according to law, therein; and hoping that if the said Mayor, Bailiffs, and Burgesses of the town aforesaid, and their successors, be made to enjoy greater liberties and privileges by our grant, then they may think themselves more especially and firmly obliged to the services they are capable of, imposed by, and to be rendered to us, our heirs and successors: of our special grace,

and from our certain knowledge and into good pleasure, we have willed, ordained, constituted, declared, and granted, and by these presents, for ourselves, our heirs, and successors, we do will, ordain, constitute, declare, and grant, that the said town of Liverpool, in the county of Lancaster, hereafter for ever be, and shall be a free town of itself, and the Burgesses of the same town and their successors for ever hereafter, be and shall be by virtue of these presents, one body Corporate and politic, in deed and in name, by the name of Mayor, Bailiffs, and Burgesses of the Town of Liverpool, in the County of Lancaster; and them by the name of Mayor, Bailiffs, and Burgesses of the Town of Liverpool, in the County of Lancaster, one body Corporate and politic, in deed and in name, really and fully, for ourselves, our heirs, and successors, we erect, make, ordain, constitute, confirm, and declare, by these presents; and that by the same name they may have perpetual succession, and that they by the name of the Mayor, Bailiffs, and Burgesses of the Town of Liverpool, in the County of Lancaster, may and shall be in all future time fit persons, and in law capable to have, purchase, receive, and possess manors, lands, tenements, liberties, privileges, jurisdictions, franchises, and hereditaments of whatsoever nature or kind they be, to themselves and their successors, in fee and for ever, or for the term of a year, or years, or otherwise, in any manner whatsoever; and also goods and chattels, and any other things whatever, of whatsoever kind, nature, quality, or species they shall be; (3) and also to give, grant, demise, alienate, assign, and dispose of lands, tenements, and hereditaments; and to do and perform, all and singular other deeds and things, by the name aforesaid; and that, by the same name of Mayor, Bailiffs, and Burgesses of the

Capable of enjoying Lands of suing, and being sued.

town of Liverpool, they may be able, and have power to sue and be sued, to answer and be answered, to defend and be defended in all courts, pleas, and places whatsoever, and before all judges, justices, and other persons and officers of ours, and of our heirs and successors whatsoever, in all and singular actions, pleas, suits, plaints, causes, matters, and demands of what kind, name, nature, quality, or sort soever they may or shall be, in the same manner and form as any other of our liege subjects, of this our kingdom of England, fit persons and in law capable or any other body corporate and politic, within our kingdom of England, may or shall have, purchase, receive, possess, enjoy, hold, give, grant, demise, alienate, assign, and dispose of, sue and be sued, answer and be answered, defend and be defended, do yield or perform : (4) And that the Mayor, Bailiffs, and Burgesses, of the town aforesaid, may have a common seal to be made use of for all causes and businesses, of theirs and their successors whatsoever to be done ; and that it may and shall be lawful for the same Mayor, Bailiffs, and Burgesses and their successors, that seal at their pleasure from time to time, to break, change, and make anew, as to them it shall appear best to be and to be done : (5) And it is our further pleasure, and by these presents for ourselves, our heirs, and successors, we grant to the said Mayor, Bailiffs, and Burgesses of the town aforesaid and their successors, that hereafter for ever there may and shall be one of the Burgesses of the aforesaid town, in form hereafter in these presents mentioned elected, who shall be, and shall be called Mayor of the same town, and that in like manner there may and shall be within the town aforesaid, two of the Burgesses of the said town, in manner as hereafter in these presents mentioned, elected, who shall be and be called Bailiffs of the

To have a common seal, with power to change, break, and new make the same at pleasure,

Appointment of a Mayor to be elected as afterwards mentioned.

same town: (6) And we further will, and by these presents, for ourselves, our heirs, and successors, we grant to the said Mayor, Bailiffs, and Burgeses of the town aforesaid, for the time being or the greater part of them, of whom the said Mayor, and one of the Bailiffs of the town aforesaid, for the time being we will to be two, upon public notice thereof given for that purpose assembled, may and shall have power and authority of granting, constituting, ordaining, and making from time to time, any reasonable laws, statutes, constitutions, decrees, and ordinances in writing, which to them or the greater part of them, of whom the Mayor and one of the Bailiffs of the said town, for the time being we will to be two, shall seem to be good, wholesome, useful, honest, and necessary, according to their sound judgment, for the good rule and government of the town aforesaid and all and singular the officers, ministers, artificers, inhabitants, and residents whatsoever, within the town aforesaid and the liberties thereof, for the time being, and for shewing in what manner and order the same Mayor, Bailiffs, and Burgeses, and all and singular the officers, ministers, Burgeses, artificers, inhabitants, and residents of the town aforesaid in their offices, functions, ministries, trades, and callings within the said town, and the liberties and precincts thereof, for the time being shall behave and conduct themselves for the further public good, common advantage, and good rule of the said town, and the victualling of the same, and for all other things and causes, touching or in any manner concerning the town aforesaid: (7) And that the same Mayor, Bailiffs, and Burgeses of the town aforesaid for the time being, or the greater part of them (of whom the aforesaid Mayor, and one of the Bailiffs of the town aforesaid, for the time being we will to be two) as often as they shall have made, appointed, ordained or establish such laws, institutions, rights, ordi-

Or two Bailiffs the same.

A power to make by-laws given to the Mayor, Bailiffs, and Burgeses upon public summons for this purpose assembled.

Power to enforce the same by penalties or fine.

laws, and constitutions in the manner aforesaid,
 may and shall have power, to make, ordain, limit,
 and provide in like manner, such pains, punishments,
 and penalties by imprisonment of the body, or by
 fines, or amerciaments, or by either of them against
 and upon all offenders against such laws, rights, or
 ordinances, and constitutions, or one or any of them,
 as and which, to the same Mayor, Bailiffs, and Bur-
 gesses of the town aforesaid, for the time being, or
 the greater part of them of whom the said Mayor,
 and one of the Bailiffs of the town, for the time be-
 ing we will to be two, shall appear to be necessary,
 fit, and requisite for the observation of the same
 laws, ordinances, and constitutions; (8) and the
 same fines and amerciaments to levy and have, to the
 use of the said Mayor, Bailiffs, and Burgesses and
 their successors, without hindrance of us, our heirs
 and successors, or some or any of our officers or
 Ministers, or those of our heirs, or successors, and
 without any composition to be paid out of the same
 to us, our heirs, or successors: All and singular
 which ordinances, laws, and constitutions, made as
 before-said, we will to be observed under the penal-
 ties, in the same contained: (9) so nevertheless, that
 such laws, ordinances, constitutions, imprisonments,
 fines, and amerciaments, be reasonable, and not
 repugnant, nor contrary to the laws, statutes, cus-
 toms, or rights of our kingdom of England: (10)
 And for the better execution of our will and grant
 in this particular, we have appointed, named, cre-
 ated, constituted, and made, and by these presents
 for ourselves, our heirs, and successors, we do ap-
 point, nominate, create, constitute, and make our
 well beloved James Stanley Lord Strange, son and
 heir apparent of our well beloved, and very faithful
 cousin, William Earl of Derby, to be the first and
 modern Mayor of the town aforesaid; willing that
 the aforesaid James Stanley Lord Strange, in the

Such fines to
 be levied and
 had to the use
 of the Mayor,
 Bailiffs, and
 Burgesses.

First Mayor.

office of Mayor of the said town, shall be and con-
 tinue, from the date of these presents unto the feast
 of Saint Luke next following; and thenceforward
 until some other Burgess of the aforesaid town, to
 that office shall be duly elected, preferred and sworn,
 according to the ordinances and provisions in these
 presents hereafter expressed and declared, if the same
 James Stanley Lord Strange shall so long live: (11)
 We have also appointed, nominated, created, and
 constituted, and for ourselves, our heirs, and suc-
 cessors we do appoint, nominate, create, and consti-
 tute our well beloved Richard Tarleton and James ^{The first Bail-}
 Southern, to be the two first and modern Bailiffs of ^{iffs.}
 the town aforesaid, to be continued in the same of-
 fices unto the aforesaid feast of Saint Luke next fol-
 lowing after the date of these presents, and hence-
 forward until two other of the Burgesses of the town
 aforesaid, shall be as set forth duly elected into
 that office, according to the ordinances and provi-
 sions in these presents hereafter expressed and de-
 clared, if the same Richard Tarleton and James
 Southern shall so long live, unless in the mean time
 for ill government or evil behaviour in that part, or
 for any other reasonable cause from that office they
 shall be removed, or either of them shall be remov-
 ed: (12) And it is our further pleasure, and by these
 presents for ourselves, our heirs, and successors, we
 give and grant to the aforesaid Mayor, Bailiffs, and
 Burgesses and their successors, that the Mayor,
 Bailiffs, and Burgesses aforesaid for the time being,
 or the greater part of them from time to time in all
 future time, may and shall have power and authority
 yearly and every year for ever, upon the feast of ^{Yearly elec-}
 Saint Luke to choose and name, and that they may ^{tion of a May}
 chuse and name one of themselves, who shall be ^{or on Saint}
 Mayor of the aforesaid town for one whole year then ^{Luke's day.}
 next following; and (13) that he, after he shall be ^{Before whom}
 (so as before said) elected and named into the office ^{to be sworn.}

Provision in
case of death
or amotion of
any Mayor.

Yearly elec-
tion of two
Bailiffs.

of Mayor of the said town, before he be admitted to execute the said office, shall take a corporal oath before the last Mayor his predecessor and the Bailiffs of the aforesaid town for the time being, and the Burgesses of the same town, or so many of them as shall be present, to perform that office, justly, well, and honestly in all things touching the same; and after he hath so taken an oath of this kind, he may and shall have power to execute the office of Mayor of the said town for one whole year thence next following: (14) And if it shall happen to the Mayor of the aforesaid town so elected and sworn, within one year after he shall be elected and sworn into the office of Mayor of the said town, to die, or from that office to be removed that then and so often it may and shall be lawful for the aforesaid Bailiffs and Burgesses or the greater part of them, for the time being, in a convenient time after the death or removal of any such Mayor, one other of themselves into the office of Mayor of the said town, to choose and appoint according to the ordination and provision in these presents above declared, and that he so elected as set forth into the office of Mayor of the said town, that office may hold and exercise during the residue of the same year, having first taken the corporal oath in the form aforesaid, and thus as often as the case shall so happen. (15) And we further will, and for ourselves, our heirs, and successors, by these presents we grant that the said Mayor, Bailiffs and Burgesses of the aforesaid town for the time being, from time to time in all future time, may and shall have yearly and every year forever, power and authority upon the aforesaid feast of Saint Luke to choose and name, and that they may chuse and name two of themselves, who shall be Bailiffs of the town aforesaid for one whole year then next following; and that they, after they shall be elected and named so as is before set forth into

the office of Bailiffs of the said town, before they be admitted to execute that office, shall take a corporal oath before the Mayor and last Bailiffs of the said town for the time being, and the Burgesses of the said town, or so many of them as shall be then present, to perform that office justly, well, and faithfully in all things touching that office: and that after this oath thus taken, they may and shall have power to execute the office of Bailiffs of the town aforesaid, for one whole year then next ensuing, unless in the mean time for ill behaviour or some other reasonable cause, they be removed by the Mayor and Burgesses of the said town, or the greater part of them or one of them shall be removed; (16) and if it shall happen that the Bailiffs of the said town, either of them for the time being, within one year after they or he shall be elected and sworn to the office of Bailiff or Bailiffs of the said town so as is before set forth, die, or from that office be removed, that then and so often it may and shall be lawful for the said Mayor and Burgesses of the town aforesaid, for the time being, or the greater part of them, one other or two others of themselves, Bailiff or Bailiffs of the town aforesaid to elect and appoint according to the ordination and provision in these presents above declared, and that he or they may hold and exercise that office during the residue of the same year, a corporal oath being first taken in the manner before mentioned, and thus as often as the case shall so happen: (17) And we further will and by these presents for ourselves and our successors. We grant to the said Mayor, Bailiffs, and Burgesses of the Town aforesaid, and their successors, that the Mayor, Bailiffs, and Burgesses of the said Town for the time being, and a clerk appointed to take recognizances of debts, according to the form of the Statute Merchant, and Statute of Acton Burnel, in the manner and form hereafter, in these

Before whom
to be sworn.

Provision in
case of death
or a motion of
the Bailiffs or
one of them.

The Mayor
Bailiffs and
Burgesses and
Common Clerk
to take recog-
nizances.

Appointment
of a seal of two
pieces for re-
cognizances, &
by whom each
seal shall be
kept.

presents expressed and mentioned, may have for ever, full power and authority, of taking and receiving any recognizances whatsoever, and executions thereupon granted, according to the form of the (18) Statute Merchant, and Statute of (19) Acton Burnel lately published, and also of doing and performing all other things, which by virtue of the same Statutes, or either of them do belong, or can, or ought to belong to any Mayor, and to any clerk, or either of them, in any City, Borough, or Town incorporate, within this our Kingdom of England, apointed for recognizances of debts, according to the form of the said Statutes, or either of them. (20) And that the same Mayor, Bailiffs, and Burgesses, and clerk for the time being, may and shall have, and by virtue of these presents they may make, assume, and shall apply one Seal of two pieces, of which one part shall be the greater part, and the other part of the same shall be the less part, to seal the aforesaid recognizances, before them hereafter to be recognized, according to the form of the said Statute Merchant, and of Acton Burnel aforesaid, which same seal shall be, and shall be approved of henceforward for ever, as our seal, and that of our heirs and successors, for taking and sealing the aforesaid recognizances, within the Town aforesaid; the greater part of which seal shall always remain in the custody of the Mayor of the same town, for the time being, and the other part of the same seal shall be, and shall remain for ever in the hands of the clerk for the time being, deputed or appointed to write and inroll the recognizances aforesaid, according to the intencion of these our letters patent; and for the better execution of our pleasure in this particular, we will, and by these presents for ourselves, our heirs and successors, We grant to the said Mayor, Bailiffs and Burgesses of the Town aforesaid, and their successors, (21) and we ordain that Robert Dobson, Gentleman, the com-

men clerk of the Town aforesaid, be and shall be the clerk of us, our heirs and successors, (22) to write and inroll recognizances of debts, according to the form of the Statutes aforesaid, and of either of them, within the said Town, and to keep and have in custody the inrollments, memorandums and records thereof, and to keep the less piece of the said seal, and to do and execute all other things, which to any clerk appointed for recognizances of debts, according to the form of the before mentioned Statutes, or either of them do belong to be done and executed, and the said Robert Dobson, the clerk of us, our heirs, and successors, to take, write, and inroll recognizances of debts, within the said Town, according to the form of the statutes aforesaid, or either of them, and to keep the less piece of the said seal, and otherwise to do and execute all other things, which to any clerk appointed for recognizances of debt according to the form of the statutes aforesaid, or either of them do belong, to be done and executed for ourselves, our heirs, and successors; we make, ordain, and constitute by these presents. And, we further will and grant to the said Mayor, Bailiffs, and Burgesses of the Town aforesaid, and their successors; and by these presents for ourselves, our heirs, and successors, we ordain that the common clerk of the same Town for the time being, be and shall be in all future time the clerk of us, our heirs, and successors, to take, write, and inroll recognizances of debts, according to the form of the said statutes, and of each of them, and to keep the inrollments, memorandums, and records thereof, and to have in custody the less piece of the aforesaid seal; and further to do and execute all other things, which to any clerk appointed for recognizances of debts according to the form of the said statutes, and each of them pertaineth to be done or executed; and the said common clerk of the town aforesaid for the time being, for ourselves, our heirs,

First Common Clerk.

His proper business.

The Mayor &
senior Alder-
men to be Jus-
tices within
the town.

and successors, to take write, and inroll recognizances of debts according to the form of the aforesaid statutes, and each of them and to keep the less piece of the said seal: and further, all other things to do and execute which to any clerk appointed for recognizances of debts, according to the form of the statutes aforesaid, and each of them belonging to be done and executed for ourselves, our heirs, and successors, we make, ordain, and constitute by these presents: (23) And we further will, and by these presents, for ourselves, our heirs, and successors, we grant to the said Mayor, Bailiffs, and Burgesses and their successors, that the Mayor of the said town for the time being, and the senior Alderman of the same town for the time being, be, and they shall be, or either of them henceforward for ever may be, and shall be our justice, and for our heirs and successors, to preserve the peace in the same town the liberties and precincts of the same, and also the statutes concerning artificers, and labourers, (24) weights and measures, within the said town, the liberties, and precincts of the same, to keep, amend, or cause to be amended: (25) And that the said Mayor for the time being, and the senior Alderman of the said town, may and shall have full power and authority to enquire concerning all manner of transgressions, misprisons, and other inferior crimes, defaults, and articles within the said town, the liberties and precincts thereof done, moved, or perpetrated, which before the keepers of the peace and Justices in any county of our kingdom of England by the laws and statutes of the same as Justices of the peace ought to be or might be inquired into, so nevertheless that to a determination of any treason, murder, or felony, or any other matter touching loss of life or limbs within the town aforesaid, the liberties and precincts of the same, without our special mandate, or of our heirs or successors, they

may not in any manner proceed : (26) And further of our more extensive special favour, and out of our certain knowledge and mere good will, we grant and confirm for ourselves our heirs and successors, to the said Mayor, Bailiffs and Burgesses of the town aforesaid, and their successors, all and all manner of lawful liberties, privileges, franchises, immunities, executions, customs, quittances, and jurisdictions whatsoever, and also all and singular the same and such lands, tenements and hereditaments, (which the Mayor, Bailiffs and Burgesses of the said town, or some or any of them, by whatsoever names or by whatsoever name, or by whatsoever incorporation, or pretence of any incorporation, before this they have had, used or enjoyed, or ought to have, hold, use or enjoy, hath had, held, used or enjoyed, or ought to have done to them and their successors for ever, from the statute of inheritances by reason or pretence of any Charters or Letters Patent by any of our progenitors or ancestors, kings or queens of England, heretofore made, confirmed or granted, or by whatsoever other lawful manner, right or title, custom, use or prescription, before this used, had or accustomed) to be held from us our heirs and successors, by such, the same, and like rents and services and tenures as the same, from us or our predecessors heretofore were held, and not by any other : wherefore it is our will, and we firmly enjoin and command for ourselves, our heirs, and successors, that the said Mayor, Bailiffs and Burgesses of the town aforesaid, and their successors, may have, hold, use and enjoy, and be for ever capable to have, hold, use and enjoy all the liberties, authorities, jurisdictions, franchises and quittances before mentioned, according to the tenor and effect of these our Letters Patent, without the action or hindrance of us, our heirs or successors, the Justices, Sheriffs, or other our Bailiffs, or of our heirs or successors.

whatsoever, willing that the same Mayor, Bailiffs and Burgesses of the town aforesaid, or some or any of them, by reason of the premises, or any of them by us or our heirs, Justices, Sheriffs, Escheators, or by any Bailiffs or Ministers of ours, our heirs, or successors, whatsoever, shall not be henceforward sued, molested, vexed, or aggrieved, or in any wise disturbed, willing, and by these presents commanding and enjoining as well our Treasurer, Chancellor and Barons of our Court of Exchequer at Westminster, and other Justices of ours, our heirs and successors, as also our Attorney and Solicitor General, for the time being, and each of them, and all other our officers and ministers, whatsoever, that neither they, nor some, or any of them, any writ or information of *Quo Warranto* or any other writ, writs or processes of ours whatsoever, against the Mayor, Bailiffs and Burgesses of the town aforesaid, or some or any of them, for any causes, things, matters, offences, by claim or usurpation, or some of them by themselves, or any of them duly claimed, attempted, used, had, or usurped, before the day of making these presents, may prosecute or continue, or may make and shall cause, on any of them, may make or shall cause, to be prosecuted or continued. Willing also that the same Mayor, Bailiffs, and Burgesses of the town aforesaid, or any of them, by any justice, officer, or minister aforesaid may not be in the least molested or hindered, in or for the said duanse, claim, or abuse, of any other liberties, franchises or jurisdictions, within the aforesaid town or the liberties thereof before the day of making these our Letters Patent, or be compelled to answer for them or any of them. And further, from our more extensive special favour, and out of our certain knowledge and mere good pleasure, we will, and, by these presents for ourselves, our heirs and successors, we grant to the aforesaid Mayor,

Bailiffs and Burgesses, and their successors, that these our Letters Patent, or the inrollments of the same, shall be to all intents and purposes firm, valid, good, sufficient and effectual, in law against us, our heirs and successors, as well in all our courts as elsewhere within our kingdom of England, without any other confirmation, licences, or tolerations, from us, our heirs or successors hereafter, by the aforesaid Mayor, Bailiffs and Burgesses, or their successors, to be procured or obtained. (27) Notwithstanding the ill-reciting, or ill-naming, or the not reciting, or not naming the town aforesaid, and the rest of the premises or any part thereof, and notwithstanding the not finding the office, or inquisition of the premises, or any part thereof, whereby our title ought to be found before the making of these our Letters Patent; and notwithstanding the ill-reciting, or ill-naming, or not reciting, or not naming any demise or grant of the premises, or any part thereof, made on record or not on record, and notwithstanding the ill-naming, or not naming, any town, hamlet, parish, place, or county, wherein the premises, or any part thereof do or doth exist, and notwithstanding a full, true and certain mention of the names of the farmers, or occupiers, of the premises, or any part thereof, is not made; and notwithstanding any defects concerning the certainty, or reputation, or declaration, of the true yearly value of the premises, or any part thereof, or the yearly reserved rents of and upon the premises, or of and upon any part thereof, in these our Letters Patent expressed and contained, and notwithstanding any defects in not naming, or in wrong naming any tenant, farmer, or occupier of the premises, or any part thereof, and notwithstanding the Act in Parliament of the Lord Henry the Sixth, late King of England, our ancestor, in the eighteenth year of his reign made and published;

and notwithstanding any other defects in not right naming the nature, kinds, species, quantity, and quality of the premises, or part thereof, we also will, and by these presents for, ourselves, our heirs and successors, we grant to the said Mayor, Bailiffs and Burgesses of the town aforesaid, and their successors, that they may and shall have these our Letters Patent, both under our Great Seal of England, and also under the Seal of our Duchy of Lancaster in due manner made and sealed, without fine or fee, great or small, by them in our chanpary or elsewhere to our use in any wise to be rendered, paid or given, because that express mention of the true yearly value, or of the certainty of the premises, or any part thereof, or of other gifts and grants by us or by any of our progenitors or predecessors to the said Mayor, Bailiffs and Burgesses of Liverpool aforesaid, before this time made, doth not in these presents appear; or any statute act, ordinance, provision, proclamation or restriction to the contrary hereof, before this, had, made, published, ordained or provided, or any other thing, cause, or matter whatsoever, in any wise notwithstanding. In testimony whereof we have caused these our Letters to be made Patent: witness ourselves at Westminster, the fourth day of July in the second year of our reign."

The charter of King William confirms that King Charles I and all the privileges granted to the Mayor, Bailiffs and Burgesses.

We therefore all and singular the (28) franchises, liberties, privileges, quittances, immunities, grants, and confirmations, before mentioned, having ratified and granted for ourselves, our heirs and successors, as much as in us lies, we do accept, approve, and ratify, and all and singular the said franchises, liberties, privileges, quittances, and immunities, to our beloved the Mayor and Bailiffs in these presents hereafter named, and to the Mayor, Bailiffs and Burgesses of the town aforesaid, and their successors, by the tenor of these presents we grant and confirm.

as the before mentioned charters, or letters patent, do rationally testify, and as the same Mayor, Bailiffs and Burgesses of the said town of Liverpool, or their predecessors, ever did, or might, or ought to use and enjoy the said franchises, liberties, privileges, quittances, and immunities, although the said Mayor, Bailiffs and Burgesses, of the same town, or their predecessors, have abused or not used the said franchises, liberties, privileges, quittances and immunities, or some or any of them: (29) And Whereas it is given us to understand that a few of the Burgesses of the town aforesaid, by a combination among themselves, without the assent of the greater part of the Burgesses of the same town, and without a surrender of the before recited Charter, or any judgment of *Quo Warranto*, or otherwise given against the same, have procured a new Charter, under the seal of the county palatine of Lancaster, to be granted to the town aforesaid, bearing date, the eight day of July, in the twenty-ninth year of the reign of the late Lord, King Charles the second, in which sundry material changes were designed to be made in the government of the said town; which said alterations have caused many differences and doubts concerning the liberties, franchises, and customs of the town aforesaid, and also concerning the election and appointment of the Mayor, and divers other officers, of the same town. Now know ye, that We, graciously affecting the peace, tranquillity, and good government of the said town, and the Burgesses and inhabitants thereof, and designing to take away all those differences and doubts in this particular, of our special favor and out of our certain knowledge and mere good pleasure, do will, and by these presents for ourselves, our heirs and successors, We appoint, grant and declare, that henceforward, for ever, there may and shall be the officers and ministers following: (30) viz. forty and

The Charter
of Charles II.
disannulled &
condemned.

Common council
of 41 Bur-
gesses ap-
pointed.

one honest and discreet men of the Burgesses of the town aforesaid, who shall be and be called the common council of the said town, of which forty and one there shall be one honest and discreet man who shall be and be called Mayor of the said town, and two honest and discreet men who shall be and be called Bailiffs of the said town (31) and also there may and shall be, within the said town, one honest and discreet man skilful in the laws of England who shall be and be called Recorder of the said town, and one honest and discreet man who shall be and be called the common clerk of the said town: (32) And that every person who beareth the office of Mayor of the said town immediately after the end of the said office shall be and be called Alderman of the said town during his natural life, unless for a just cause to be thence removed: (33) And for the better execution of our will and grant in this particular, we have appointed, nominated, created, constituted, and made, and by these presents for ourselves, our heirs and successors, we do appoint, nominate, create, constitute, and make, our beloved **First Mayor.** Thomas Johnson the elder to be the first and modern Mayor of the said town: willing that the said Thomas Johnson, in the office of Mayor of the said town, shall be and continue from the date of these presents unto the feast of St. Luke next following, and further until some other of the Burgesses of the said town to that office shall be duly elected, appointed, and sworn, according to the ordinances and provisions in the aforesaid Charter, by these presents confirmed and ratified. (34) We have also appointed, nominated, created, and constituted and by these presents for ourselves, our heirs and successors, we do appoint, nominate, create, and constitute, our beloved Richard Norris and **Two first Bailiffs.** Hewston to be the two first and modern Bailiffs of the town aforesaid, to be continued in the same

One of whom
to be Mayor.

Two of the
same to be Bailiffs.

A Recorder.

Town Clerk.

Two first Bailiffs.

office unto the said feast of Saint Luke next following after the date of these presents and thenceforward until some other two of the Burgesses of the town aforesaid to these offices shall be duly elected, appointed, and sworn, according to the ordinances and provisions in the Charter before mentioned, by these presents confirmed and ratified :

(35) And we have appointed, nominated, constituted, and made, and by these presents for ourselves, our heirs, and successors, we do appoint, nominate, constitute, and make, our beloved John Entwisle, Esq. to be the first and modern Recorder of the town aforesaid, to be continued in the said office, *quam diu se bene gesserint* : (36) And we have appointed,

The first Recorder.

nominated, constituted, and made, and by these presents, for ourselves, our heirs and successors, we do appoint, nominate, constitute, and make, our beloved Jasper Maudit, Esq. William Williamson, Richard Windle, Robert Seacombe and Thomas Tyrer to be our first and modern Aldermen of the said town, to be continued in the same office during their natural lives, unless in the mean time some or any of them happen to be removed for a reasonable and just cause by the Mayor, Bailiffs, and Common Council of the said town, for the time being, or the greater part of them : (37) And we have appointed,

The first Aldermen.

nominated, constituted, and made, and by these presents, for ourselves, our heirs and successors, we do appoint, nominate, constitute, and make the aforesaid Thomas Johnson the elder, Richard Norris, Levinus Hewston, John Entwisle, and our beloved Ralph Ashton, Baronet, and Thomas Norris, Esquire, and the before chosen Jasper Maudit, William Williamson, Richard Windle, Robert Seacombe, Thomas Tyrer, and our beloved John Standford, William Travers, William Preezon, Thomas Sweeting, Joseph Prior, John Travers, John Amery, Roger Richardson, George Taylor, John Cleveland,

The first Common Council.

William Hurst, James Townsend, John Gamon, William Eloyd, John Crowther, John Crane, John Cockshut, John Lady, Joseph Briggs, William Rollins, Thomas Johnson, the younger, Thomas Allinson, Thomas Bricksted, Adam Bury, Charles Diggles, Cuthbert Sharplesse, John Thomas, Robert Shields, Richard Jones, and Richard Lurting, to be the first and modern common council of the said town,

Council's
power to re-
move one of
their own body

to continue in the office of the common council of the said town *quamdiu se bene gesserint*, unless some or any of them happen to be removed for a reasonable cause by the Mayor, Bailiffs, and common council, of the said town, or the major part of them for the time being : (38) And we have appointed, nominated, constituted, and made, and by these presents for ourselves, our heirs, and successors, we do ap-

The first town
clerk.

point, nominate, and make the aforesaid John Sandiford to be the first and modern common clerk of the said town, to be continued in the same office, *quamdiu se bene gesserint*, unless it should happen that the said John Sandiford be removed for a reasonable cause, by the Mayor, Bailiffs, and common council, of the town aforesaid, or the major part of them, for the time being : (39) And we further will, and by these presents, for ourselves, our heirs, and successors, we grant to the said Mayor, Bailiffs, and Burgesses, of the said town, and their successors, that the Mayor, Bailiffs, and Burgesses, of the said town, for the time being, or any twenty and five of

Any 25 of the
Burgesses in-
cluding the
Mayor and 1
Bailiff to be a
common coun-
cil.

them assembled, of whom, the Mayor and one of the Bailiffs of the said town, for the time being, we will to be two, be, shall be, and may exist, a common council of the said town, and shall be able and be empowered in this form of a common council, all those things to do, ordain, execute, and perform, in as full a manner and form, as the forty and one council men, of the said town, in common council present and assembled, can do, ordain, execute, or perform :

(40) And we further will, and by these presents, for ourselves, our heirs, and successors, we grant to the said Mayor, Bailiffs, and Burgesses, of the town aforesaid, and their successors; that the Mayor of the said town, by these presents named, during the time of his continuance in the office of Mayor of the said town, and every other Mayor of the said town, for the time being, for and during the time of his continuance in that office, respectively and every last predecessor of every such Mayor for the space of one year, from and after his going out, and departing from the office of Mayor of the same town, respectively, and the senior Alderman of the town aforesaid, for the time being, and the Recorder by these presents named and appointed, and the Recorder of the same town for the time being, may and shall be, and every one of them may and shall be, our Justices and of our heirs and successors, to keep the peace within the town aforesaid, the liberties and precincts thereof: (41) We will moreover and by these presents, firmly command that the Mayor, Bailiffs, Recorder, and Common Clerk, by these presents named and appointed, before they be respectively admitted to the execution of their offices, or any of them be admitted, shall severally take a corporal oath, well and faithfully to execute what relates to their office respectively, and every one of them shall take such oath before the before mentioned Ralph Ashton, Thomas Norris, and Jasper Maudit, or some two of them, to whom, or to any two of them, we give and grant by these presents, full power and authority to give and administer such an oath to the said Mayor, Bailiffs, Recorder, and Common Clerk, respectively: (42) we will also, and by these presents firmly command, that the Common Council, by these presents named and appointed, before they be respectively admitted, or any of them be admitted, to the execution of their offices,

The Mayor, the senior and junior Aldermen and Recorder to be Justices of the peace.

The Mayor, &c. to be sworn

Before whom.

The Common Council to be sworn.

shall, and every one of them shall severally take a corporal oath well and faithfully to execute what relates to their offices respectively before the Mayor, Bailiffs, and Recorder, by these presents named and appointed, or some two of them, to whom or any two of them, we give and grant by these presents full power and authority to give and administer such an oath to the Common Council aforesaid. (43)

Before whom. And we further will, and by these presents we ordain and appoint, that the Mayor and Recorder, by these presents nominated, and constituted, and the senior Alderman of the said town, as before mentioned, before they or any of them be admitted to the execution of the offices of Justices of the Peace within the town aforesaid, shall, and every one of them shall, take their corporal oath upon the holy gospel of God, well and faithfully to perform the offices of Justices of the Peace within the said town, in all things, and by all things pertaining to those offices, and also the oaths in this particular by the Laws and Statutes of this our kingdom of England, provided and required to be taken by all Justices of the Peace, before the said Ralph Ashton, Thomas Norris, and Jasper Maudit, or some two of them; to which said Ralph Ashton, Thomas Norris, and Jasper Maudit, or any two of them, we give and grant by these presents full power and authority to give and administer such oath and oaths: (44)

Before whom. moreover we will, and by these presents for our heirs and successors firmly enjoining, we order and command that the Mayor, Recorder, and senior Alderman, and the last predecessor of every Mayor of the town aforesaid, for the time being, who by virtue of these presents hereafter, shall be Justices of the Peace within the said town, before they or any of them be admitted to the execution of the office of Justices of the Peace within the said town, shall, and every one of them shall take a corporal

Mayor, &c. to be sworn as justices of the peace.

All future Mayors, &c. to be sworn as Justices of the Peace.

oath upon the holy gospel of God, well and faithfully to perform the offices of Justices of the Peace within the same town, in and by all things touching those offices, and also the oaths, in that particular requisite to be taken by the Justices of the Peace before the Bailiffs and Alderman of the said town **Before whom:** for the time being, or some three of them, to which the said Bailiffs and Aldermen of the town aforesaid for the time being, or any three of them; we give and grant by these presents, for ourselves, our heirs, and successors, full power and authority to give and administer, from time to time, the said oaths in the manner aforesaid. (45) And we further will, and by these presents, for ourselves, our heirs, and successors, we grant to the Mayor, Bailiffs, and Burgesses of the said town and their successors, that the Common Council assembled, or the greater part of them, may and shall have full power and authority to elect and nominate, and that they may elect and nominate, at any time, within one month after the date of these presents, two of the free Burgesses of the said town, who shall be, and shall be called, Sub-Bailiffs of the town aforesaid, and shall continue in the said office unto the feast of Saint Luke, next following the date of these presents; And further, that on the said feast of Saint Luke, next following, and thenceforward yearly and every year for ever, on the said feast of Saint Luke, the common Council of the same town assembled, or the major part of them, may, and shall have, power and authority of electing and nominating, and that they may elect and nominate two of the free Burgesses of the said town, who shall be Sub-Bailiffs of the said town, for one whole year thence next following, which said Sub-Bailiffs, so henceforward elected, as is before set forth, shall be assistants and helpers to the Bailiffs of the said town, for the time being, in every thing respectively touching or concerning

Common
Council elect-
ed to appoint
two Sub-Bai-
liffs.

Election of
Sub-Bailiffs

Sub-Bailiffs to
be sworn be-
fore whom.

Sub-Bailiffs
removeable by
the Council.

On death or
removal of
Sub-Bailiffs,
others to be
chosen by the
Council.

their office of Bailiffs, (46) and that they after they shall be elected and nominated so as before-mentioned into the office of Sub-Bailiffs of the said town, before they be admitted to execute those offices, shall take a corporal oath before the Mayor and Aldermen of the said town, for the time being, or so many of them who shall be present, justly, well, and faithfully to perform those offices in all things touching the same, and that after such oath, thus taken, such free Burgesses as by virtue of these presents, to the office of Sub-Bailiffs of the said town within one month after the date of these presents shall be elected, may be empowered to execute those offices, until the feast of St. Luke next following the date of these presents, and also such free Burgesses, who on the feast of St. Luke next following the date of these presents, and thence afterwards yearly on the said feast of St. Luke, shall be elected to the office of Sub-Bailiffs of the said town, may and shall have power to execute those offices for one whole year thence next following, (47) unless in the mean time for ill-behaviour, or for any other reasonable cause, by the Mayor and Common Council of the said town, or the major part of them in common council assembled, they be removed, or either of them be removed; and if it happen that the Sub-Bailiffs of the said town, or either of them for the time being, within one year after that to the office of Sub-Bailiff, or Sub-Bailiffs, of the said town, he or they shall be elected and sworn in the manner before-mentioned, die, or from that office be removed, (48) that then, and so often, it may and shall be lawful for the said Mayor and Common Council of the said town for the time being, or the greater part of them, in Common Council assembled, one other, or two others, of the free Burgesses of the said town, to elect and appoint Sub-Bailiffs of the said town, and that he or

they may have and exercise that office during the residue of the same year, having first taken a corporal oath in the manner before-mentioned, and thus as often as the case shall so fall out. And furthermore, we will, for the better rule and government of our people of the town aforesaid, in the absence of the Mayor of the said town; and by these presents, for ourselves, our heirs, and successors, we grant to the said Mayor, Bailiffs, and Burgesses of the said town, and their successors, that for the future (49) the Mayor of the same town for the time being may have, and in all future time shall have, full power and authority to depute and constitute some one other free Burgess of that town, to execute well and faithfully the office of Mayor, and all things relating to that office, in the absence or sickness of himself, the Mayor, and also to give and administer an oath to the same free Burgess, so deputed for the good and due execution and performance of the same office, during the absence or sickness of the Mayor of the said town, and thus as often as the case shall so fall out: (50) And we further will, and by these presents, for ourselves, our heirs, and successors, we grant to the Mayor, Bailiff, and Burgesses of the said town, and their successors, that whensoever it shall happen that any Mayor, Recorder, Common Clerk, or some or any of the Bailiffs, or of the Common Council of the said town, for the time being, die, or from his office, or from their offices, be removed, or depart, or refuse to stand; that then, and in every such case, another fit person, or fit persons, from time to time, to and into the office of him, or to and into the offices of them, so removed, or dying, or refusing to stand, shall be elected, and sworn, and appointed, by such persons in such manner, time, and form, as in that particular was used and accustomed before the making of a certain Charter, or Letters Patent,

Mayor on sickness or absence, may appoint any free Burgess for his deputy.

Elections upon death or removal of Mayor, &c. or Common Council, to be as before the Charter of Charles II.

granted to the Mayor, Bailiffs and Burgesses of the said town, bearing date the eighteenth day of July in the twenty-ninth year of the reign of the late King Charles the Second, and the office or offices, place or places, to which he or they shall be so elected and sworn, he shall exercise, and they shall exercise, for such time and times, and shall be thence removed in such manner as in like cases; in this particular was used and accustomed before the said eighteenth day of July, in the twenty-ninth year of the said reign of the late King Charles the Second: (51) And we further will, and by these presents, for ourselves, our heirs, and successors, we grant to the said Mayor, Bailiffs and Burgesses, of the said town, and their successors, that the Mayor, Bailiffs and Burgesses of the said town, and their successors henceforward, in all future times, may and shall have a sword, and full power and authority to carry such sword before the Mayor of the said town, for the time being: And we further will, and by these presents, for ourselves, our heirs, and successors, we grant to the Common Council of the town aforesaid, for the time being, in council assembled, or the major part of them, (whereof the Mayor and one of the Bailiffs of the said town for the time being, we will to be two) full power and authority from time to time for choosing and naming, and that they may be able to choose and name, one honest man within the said town to be the Sword-bearer; and that he who, so as is before-mentioned, shall be from time to time elected and nominated to the said office of sword-bearer, shall be and shall continue in the said office during the pleasure of the Common Council of the said town, for the time being, on the major part of them, of whom the Mayor and one of the Bailiffs of the said town for the time being, we will to be two: (52) And further, from our more abundant

A sword to be carried, &c.

Common Council to choose a sword bearer.

and special favor, and of our certain knowledge and mere good will, we have given, granted, restored, confirmed, approved, and ratified, and by these presents, for ourselves, our heirs, and successors, we do give, grant, restore, confirm, approve, and ratify, to the said Mayor, Bailiffs and Burgesses of Liverpool aforesaid, and their successors, all and all manner of manors, messuages, mills, rents, lands, tenements, tithes, meadows, pastures, commons of pasture, ferries, fairs, and so many, so great the same, such and such like, powers, prescriptions, liberties, privileges, franchises, immunities, jurisdictions, charters, letters patent, letters patent of incorporation, customs, offices of profit, officers, exemptions, quittances, wastes, waste grounds, farms, commodities, emoluments, goods, chattels, and hereditaments whatsoever, how many, how great, of what quality soever, and which by the said Letters Patent, bearing date the said fourth day of July, in the second year of the said reign of the late King Charles the First, were granted and confirmed, or mentioned to be granted and confirmed, or by any other Letters Patent, granted or mentioned, to be granted and confirmed, to the Mayor, Bailiffs and Burgesses of the town aforesaid, or which the said Mayor, Bailiffs and Burgesses, or their predecessors, by whatsoever name, or whatsoever names of incorporation, before the eighteenth day of July, in the twenty-ninth year of the said reign of the late King Charles the Second, have had, held, used, enjoyed, or occupied, or had a right to have, hold, use or enjoy to themselves, and their successors, by reason or pretence of the said several letters patent, or any of them, or of any other charters, grants, or Letters Patent whatsoever, by any of our progenitors, or ancestors, late Kings or Queens of England, in any manner made, granted and confirmed before the said eighteenth

Confirmation
of former pri-
vileges, pos-
sessions, &c.

day of July, in the twenty-ninth year of the said reign of the late King Charles the Second, or in whatsoever other legal manner, right, or title, custom, use, or prescription, before the date of these presents lawfully used, had, accustomed, or enjoyed. And lastly, we will, and by these presents for ourselves, our heirs and successors, we grant to the said Mayor, Bailiffs and Burgesses of the town aforesaid, and their successors, that they may and shall have these our Letters Patent, both under our Great Seal of England, and also under the Seal of our county palatine of Lancaster, and our duchy of Lancaster, in due manner made and sealed.

In testimony whereof we have caused these our Letters to be made Patent.

Witness, Thomas Archbishop of Canterbury, and the other Guardians and Justices of the Realm at Westminster, the twenty-sixth day of September, in the seventh year of our reign.

By writ of Privy Seal,

FIGOTT,

For the Fine of twenty Marks in the Hanaper.

J. SOMERS, C. S.

REMARKS,

AND

EXPLANATORY NOTES,

ON THE FOREGOING

CHARTER.

1. THE town of Liverpool made a body corporate and politic by the name of Mayor, Bailiffs, and Burgesses. A. D. 1627. 2. Charles I.

2. In opposition to the fluctuating and changeable methods of administration the town had been under before, as appears by the records during the reigns of Queen Elizabeth, and King James I. the government having been (particularly during that period) sometimes under the direction of the Mayor, Bailiffs, and Burgesses, assembled by public summons; at other times of a deputation from the whole body, under the name of a Common Council, with the Mayor, Bailiffs, &c. which had no other authority besides what they derived from the order of a common hall, port-moot, &c. To obviate the inconveniences of which variable and undue method of government, this Charter was sued for and obtained.

3. The power of purchasing and enjoying lands, &c. and of disposing of the same, is vested in the Mayor, Bailiffs, and Burgesses, and none else, or under any other name or character.

4. The Mayor, Bailiffs, and Burgesses, authorized by this Charter, to have a Common Seal, and to alter the same at their pleasure.

5. Appointed that one of the Burgesses shall be chosen Mayor, and two of the Burgesses be chosen Bailiffs.

6. The grant and institution of a legislative power to the Mayor, Bailiffs, and Burgesses assembled upon public summons, a power assumed by a set of men, before and since, under the name of a common council, without any lawful authority or warrant for the the charter requiring that all Bye Laws be made in and by an assembly of the Mayor, Bailiffs, and Burgesses, convened by public notice, given for that purpose.

7. To enforce the said laws by such penalties of fine or imprisonment as they shall think meet, provided such fines, &c. be reasonable, and in no-wise contrary to the laws and statutes of the land.

8. Such fines ordered to be levied and applied to the use of the said Mayor, Bailiffs, and Burgesses and their successors.

9. All the laws made and penalties enacted to be reasonable, and consistent with the known and established laws of England.

10. James, Lord Strange, appointed the first Mayor under this Charter.

11. Richard Tarleton and James Southern, appointed the first Bailiffs.

12. The election of a Mayor to be annually on St. Luke's day.

13. The new Mayor, to be sworn before the preceding Mayor, the old Bailiffs, and Burgesses.

14. If the Mayor happen to die, or be removed within a year, the Bailiffs and Burgesses to elect another, to serve the office for the remainder of the year, who must take the oath in the same manner and form as his predecessor.

15. Two Bailiffs to be annually chosen on Saint Luke's day, and sworn before the new Mayor, the preceding Bailiffs, and the Burgesses.

16. If a Bailiff die, or be removed, the Mayor and Burgesses to choose another.

17. The Mayor, Bailiffs, and Burgesses with the Town Clerk have power to take recognizances, &c.

18. A Statute Merchant, otherwise called Statute Staple, is a short writing in nature of a Bond, according to the form provided in certain Statutes.

19. The Statute of *Acton Burnel* was made 13 Edw. I. appointing Statutes Merchant, and so named from the place where it was made, viz. a castle of that name, formerly belonging to the *Burnels*, afterwards to the *Earls of Shropshire*.

20. A Seal of two pieces, for Sealing recognizances, the larger piece to be kept by the Mayor, the smaller by the Town Clerk, for the time being.

21. Robert Dobson, Clerk, appointed under this Charter.

22. The proper business of the Clerk, is to write and enter recognizances of debts; to keep the enrolled leases, quit-rents, and records thereof, &c. it does not appear to be that of preparing Leases, to which the town Clerks of late years, have claimed a right.

23. The Mayor and Senior Aldermen to be Justices to keep the Peace within the said Town.

24. To regulate weights and measures.

25. To enquire concerning smaller crimes, but not concerning treason, murder, or other capital offences.

26. Confirmation of former privileges, &c.
 27. No defect of expression, &c. to defeat the intention of this Charter.

28. Here is a most full and express recognition and confirmation of every thing granted and appointed by the Charter of Charles I. without any the least exception.

29. The Charter of Charles II. obtained surreptitiously by a faction of a few of the Burgesses, without the consent and concurrence of the Corporation in general, is here declared to be null and void, as having been obtained by irregular methods, and also for ends and purposes different from, and inconsistent with the administration and government of the town established by the former Charter.

By this Charter of Charles II. it was appointed, amongst other things, that there should be a Common Council, consisting of the Mayor and fifty-nine others, whereof fifteen might live out of town: that the Mayor, Bailiffs and Freemen should be chosen and appointed by this Common Council, or thirty of them; but it doth not appear that even this body had a grant of the legislative power, but that was still continued to the Mayor, Bailiffs and Burgesses, as granted and established by the Charter of Charles the First. But the irregular, surreptitious, clandestine, and factious method of obtaining the said Charter, with the design of making changes in the constitution of officers and the management of the public affairs, to the defeating and cutting off the interest which by the Charter of King Charles the First, was granted to the *public assembly of the Burgesses in general*, upon PUBLIC SUMMONS, and to *them ONLY*, are given as reasons for vacating, annulling, and condemning the said Charter of Charles II.

And it is highly probably, that any other Charter, which at any time hath been, or shall be, obtained in such clandestine method, without the general concurrence of the Burgesses sought for and obtained, however specious or commodious the ends aimed at may be, or appear to be, will, upon proper representations, be liable to the like censure, and the authors and managers of any such corrupt and fraudulent transaction may expect, upon proper occasion, to be treated as having presumed (contrary to the character of honest men, and faithful subjects and citizens) both to impose upon the king and his council, by a false representation of that as being the humble petition, and dutiful request, of the whole Corporation, which is but the sinister machination of a factious few; and also to cheat and delude the whole body of the freemen, by palming upon them that as a gracious favour of the Sovereign to their humble request, which is no more than the effect of their own sinister and interested application and management, without the least concurrence of the free Burgesses in general.

30. The appointment of forty-one of the Burgesses to be a select body, for the benefit of the Corporation, particularly and princie

pally, that from this Body there may be always elections assuredly made of persons properly qualified to be Mayor and Bailiffs; the annual choice of these Magistrates being expressly appointed to be out of the said forty-one. But it is very remarkable that (contrary to seeming general apprehension) there is no institution, nor so much as the least hint, direct or conclusive, of any legislative power given to this body of men; for the authoritative administration of public affairs, the management and application of the public revenues, or any thing relating to order and government, (excepting a few particulars of no great importance, as will afterwards appear) every thing relating to the government and direction of public affairs having before been expressly confirmed to the Mayor, Bailiffs and Burgesses, by public summons assembled, by the preceding institution of the Charter of Charles I. which made that institution.

31. Appointed, that one honest and discreet person, learned in the laws of England, shall be Recorder, and one honest and discreet person shall be Town Clerk; but it is not said in this Council.

32. Every Mayor after the determination of his mayoralty shall be Alderman for life, except rejected, &c.

33. Thomas Johnson, sen. appointed first Mayor under this Charter.

34. Richard Norris and Levinus Hewston appointed the first Bailiffs under this Charter.

35. John Entwistle, Esq. the first Recorder.

36. Jasper Maudit, Esq. William Williamson, Richard Windle, Robert Seacombe, and Thomas Tyrer, appointed the first Aldermen under this Charter, to continue for their natural lives, unless for good reasons removed by the Mayor, Bailiffs, and Common Council, or the major part of them: and the same in respect of every other amotion, rejection, &c. (and in general) as will appear afterwards.

37. The first Common Council appointed and named to continue *quandiu se bene geaserint*, unless removed as in the note next before.

38. John Sandiford, first Town Clerk, *quandiu se bene geaserint*, unless removed as before.

39. The Mayor, Bailiffs and Burgesses, or any twenty-five of the whole, including the Mayor and one Bailiff, are here positively appointed to be, to all intents and purposes of action, a Common Council; and any action done by them to be as valid and authoritative and effectual as if done by the forty-one before appointed. This is as clear as words can be from this part of the Charter.

This clause it is plain hath not been clearly understood, and perhaps is not expressed with all the perspicuity as might be wished. Upon this article alone is undoubtedly founded (though it may seem erroneously) the practice of making Twenty-five of the Forty-one essentially necessary to be, make an authentic council, whereas it will

afterwards appear undeniably, as well as by what occurs before. that every action which the council, as such, are impowered to do, will be sufficiently authenticated by the concurrence of the major part of the council, so that if but Twenty-one out of the Forty-one concur to the doing or instituting of any thing, which the council may do or institute, the same is declared to be effectual, legal, and valid; and further the said practice, cannot regularly be founded upon, or referred to this cause, because the Twenty-five, or a greater number, impowered to make an authentic council for transaction of affairs, may be of the Burgesses at large, and are not limited, or appointed (except the Mayor and one Bailiff) to be of the Forty-one out of whom the Mayor and Bailiffs are to be chosen.

It must be confessed it is not very easy to conceive for what reason this occasional, prudential, succedaneous council should have been instituted, which may be quite different (except as above said) from the forty-one (seemingly instituted as an essential part of the constitution) yet with a power, influence, and authority for action, quite equal. No other more probable reason of this obscure and mysterious appointment can be imagined, than that the same was prudently thought necessary to prevent, or remedy, any inconvenience it was apprehended, might eventually arise in the administration of public affairs, from the obstinate refusal or neglect of the gentlemen of the council, or any of them (as is known to have sometimes been the case) to attend upon the duty of their character. That in such case it might be in the power of the Mayor, with one Bailiff, to assemble such a Number of the Freeman, as might be sufficient to authorize, and give effect to any action necessary to be done for the public utility, notwithstanding such refusal or neglect. It may hence further appear, how improbable it is that it should be (as it certainly never was) the design of this Charter to invest the council with a directive or legislative power in the corporation, because this succedaneous council is expressly declared to have all the power and authority to act, which the original council hath; but it is not imaginable the public affairs were designed to be under the direction of so small a part of the body, and in such a fluctuating and uncertain course of Administration.

It is very plain from the many inconveniences which may be visibly consequent upon this article, and the uncertain power of the council in general, that an explanation and limitation thereof, seems very desirable.

40. The Mayor, with the senior and junior Aldermen, and the recorder, appointed justices of the peace within the town.

41. The Mayor, Bailiffs, Recorder, and Town Clerk, before named, not to act in those characters, respectively, till they have taken the oaths relating to their different office.

42. The common council, before admitted to act, to be sworn to the due execution of their office.

43. The Mayor recorder and senior Alderman to be sworn as justices of the peace.

44. Every Mayor, Recorder, and senior and junior Aldermen to be sworn as justices of the peace.

45. Two Sub-Bailiffs to be chosen by the common council, or the major part of them.

This seems to be the first instance of the collation of authority to the common council, to do any action immediately relating to the government of the town, and it is very plain, from the express words of the Charter, that this, as well as the other particulars noted before and afterwards, may be sufficiently performed by a majority of the council, and the number of twenty-five, before noted, is quite of a different consideration, and has no necessary connexion with, or relation to the council of forty-one.

46. Sub-Bailiffs ordered to be sworn before the Mayor and Aldermen.

47. Sub-Bailiffs to serve a whole year, unless removed.

48. Upon death or removal of Sub-Bailiffs, the Mayor and council impowered to elect others.

It is very obvious that as the common council is impowered by this clause to elect and appoint the Sub-Bailiffs, so upon death or removal, they may elect others in their places; and the same with respect to a Sword bearer after appointed; but although they are made judges of the cause or reason of removing an Alderman, town clerk or common council man; and upon sufficient cause, have authority to remove him, which is a considerable addition of power, yet they are not authorized to elect or appoint another in his room, plainly, because they are no where authorized by the Charter, to make the original election of those officers. It is not to be imagined that if the constitution had required, that the council should have had the power to fill up the vacancies happening in that body, by death or removal, that power should not have been as expressly declared and appointed as it is here with respect to the Sub-Bailiffs, &c.

49. The Mayor on occasion of absence or sickness, may appoint any Freeman, *although not of the council*, to be his deputy.

50. The method of supplying the place of any Mayor, Town Clerk, Bailiffs, recorder or common council man, in case of death, recess, or removal, to be the same as was used before the Charter of Charles II.

This is a point of very great importance which seems not to have been sufficiently known or attended to. By the Charter of Charles I. elections to supply such vacancies as should happen by the death or removal of the officers instituted by that Charter, were appointed to be made by the Burgesses at large, with the surviving or remaining officers, in the same manner (as near as the case would allow) as the original elections were made: and this was the only authentic method before the Charter of Charles II.

which is rejected under the new Charter of William III. all vacancies by death or removal are ordered to be supplied as *they were wont to be supplied before the Charter of Charles II.* that is, as under that of Charles I. Whereby must be understood and intended, that all the vacancies here mentioned (particularly those in the Common Council) must be supplied as those of the Mayor and Bailiffs were ordered to be supplied by the Charter of Charles I. viz. by the free election of the Burgesses at large, with the surviving or remaining officers (for these are the only vacancies mentioned to be supplied by that Charter.)

Before the twenty-ninth of Charles II. there was no Common Council appointed by Charter. And those assemblies of Burgesses, which at various times before that period were called Common Councils, were either voluntary or occasional meetings of a number of the Burgesses, who took that character upon themselves, or they were deputed by a general assembly of the Burgesses, in common-hall, to prepare business for public debate and resolution.

It must be acknowledged, that in the twenty-second year of Queen Elizabeth, at a Common-hall it was appointed, that Common Councils should be regularly held, and even that the persons then nominated for that purpose, should have the power to fill up eventual vacancies in their body from time to time: this must have been about the year 1580, the Queen having begun her reign Ann. 1558, but as these Common Councils were only of popular, occasional, temporary institution, they were soon neglected, for in the year 1581, and for the greatest part (at least) of the residue of the Queen's reign, and a good part of that of her successor, public business was transacted by the Mayor, Bailiffs, and Burgesses, in Common Hall assembled; yet for the latter part of the reign of James I. it was again resumed by deputations of the Burgesses, called common councils, as before. But as these assemblies are not so much as mentioned in the Charter of Charles I. it cannot but appear that by neglect, or by exceeding the bounds of their commission, or otherwise, they had forfeited all their reputation and esteem, and that thereupon the Burgesses sued for, and obtained that Charter, for the re-establishment and confirmation of the privileges and government of the town, upon its ancient and original foundation yet afterwards, upon some emergent inconvenience, eventual upon this establishment (as it is hard to be conceived how assemblies so numerous as to answer the ends of this Charter, could be so often convened, without growing into neglect or becoming tumultuous and confused) it seems they had again, in some time, recourse to the expedient of these smaller deputations of the Burgesses, for the easier dispatch and administration of public affairs, by way of Committee, (as we have known to be frequently done in other, and particularly in Parish business, when matters of importance and intricacy have been committed to the examination, debate,

and consideration of Committees, in order to their being finally determined by a vestry.) This method was so long practised, as at length to give a handle to a set of designing men, for ends of their own ambition and interest, to sue for and obtain, in an iniquitous, fraudulent, and clandestine manner, the Charter of Charles II. to make that management authentic and perpetual; and still more unjust, oppressive, and inconsistent with the former Charter, by taking even the Elections of Mayor and Bailiffs out of the hands of the people, and putting them into the power of a factious, designing council of sixty Burgesses, under pretence of a more commodious administration, but really with a view to enslave the people, and deprive them of all the privileges of their incorporation, and put them in a worse condition than they could have been without any incorporation at all. The consequence of this perverse management, in a little time became so universally odious and intolerable, especially as it was soon after aggravated by the oppressive Charter of King James II. (as the same, or similar, iniquitous management always will do) that after the composition of the public affairs of the nation, under King William III. they successfully applied to that Beneficent Monarch, for the restoration and establishment of their privileges, by the grant of the Charter here recited; which by condemning and disannulling the Charter of Charles II. and restoring and confirming that of Charles I. was plainly designed and intended, to take away whatever debarred the Burgesses of those liberties, privileges, and immunities thereby granted. But it may be very well enquired how consistently with those privileges, the Council afterwards assumed a power to nominate persons for the perpetual filling up the eventual vacancies of that body, and whether that power, especially as it hath for many years been exercised, doth not give the Council a force and influence, absolutely inconsistent with the avowed design, and express declaration of the Charter; *may not one with good assurance, upon the perusal of this state of the case, ask any intelligent and unprejudiced person, what the Burgesses of Liverpool had to complain of, under the Charter of Charles II. of which those of later times have not had to complain?* Would not this grievance, if not wholly, yet in a great measure be remedied, by restoring to the Freemen that right this clause of the Charter gives them of electing Common Council men?

In all ages and Nations of the World, where liberty hath been preserved, councils, senates, parliaments, and all other assemblies of men intrusted with the charge and direction of public affairs, have been chosen, and appointed by the free suffrages of the people, whereof there can be no more pregnant instance given than that of the election of parliaments, according to the theory at least of the constitution of our own country.

(51) A sword appointed to be carried before the Mayor, and power given to the common council, or the major part of them, to choose a sword bearer.

(52) A further confirmation of the grants made by the Charter of King Charles I. and used before that of Charles II.

By this repeated confirmation, the grants and institutions, made by the Charter of Charles I. are again ratified and established, whereof the chief and most important, besides the appointment of Magistrates, are those of having the affairs and interests of the corporation committed to the management and direction of the Mayor, Bailiffs, and Burgesses, assembled for that purpose, upon public notice, and that *they, and THEY ONLY in that capacity, shall have the power of making bye laws* for the administration of the community, and all its rights and interests, which are declared to have been wrongfully invaded, by the Charter of Charles II. which took the elections of Magistrates, and other things, out of the hands of the Burgesses, and put them into those of a council of sixty, which ~~is by this Charter declared to be an oppressive, and illicit constitution,~~ and therefore hereby disannulled, and the direction of affairs, the making bye laws, the election of Magistrates, &c. restored and confirmed to the *Mayor, Bailiffs, and Burgesses, assembled upon public summons*, as before by the Charter of Charles the first, here repeated and confirmed, with the additional institution of a common council, to be a perpetual supply of men proper to be chosen for Magistrates, with a power to choose sub-bailiffs, and a sword bearer, and upon good reason to reject the same, and upon rejection or death to re-place them; as also for good reason to reject an Alderman, Bailiff, or common council man, but ~~do not appear by this Charter to be empowered to appoint others in the stead of such as shall happen to die, or be so rejected.~~ This it is evident will appear to be all the power by this Charter, given to the council. How the administration for many years hath comported with, and may be supported by the Charter the intelligent reader will easily judge.

In 1751, in the Mayoralty of Mr. James Gildart, a petition for a New Charter was sent up to London, in the names of the Mayor, Bailiffs, and Burgesses, under the corporation seal, but without the knowledge of the Burgesses.

This petition was referred to Sir Dudley Ryder, and Mr. Murray, (afterward Lord Mansfield) the then Attorney and Solicitor General.

It is to be observed that in every public corporate act, an order of council should precede the act itself. It is its foundation and support; but upon this occasion there was not so much as an order of council for the town clerk going up to attend so important an affair, though all his expences were afterwards paid, but a Blank was left in the council book, wherein might be inserted an order to correspond with what was granted, ~~but by no means agreeing with what was asked.~~ The following are copies of the order of council, petition, report, and charter.

**COPY OF THE MINUTE, ENTERED IN
THE COUNCIL BOOK,**

APRIL 3, 1751.

A PETITION drawn up by the Recorder being now read, for explaining the Charter of King William the Third, and for obtaining an additional Charter, to the present one for granting us an additional number of Justices of the peace for this Borough and empowering the recorder to make a deputy and for granting the sea shore to the Corporation in express words, be passed under the Common Seal of this Corporation, and be transmitted to the Recorder to prefer to his Majesty in Council, in order to obtain an explanatory Charter for the above purposes.

PETITION.

To the KING's most Excellent Majesty in Council.

THE humble Petition of the Mayor, Bailiffs, and Burgesses, of your Majesty's ancient and Loyal Borough of Liverpool, in Common Council assembled,

Sheweth,

THAT Liverpool is a very ancient Borough by prescription, long before the time of King John, who granted its first Charter.

THAT the second Charter was granted by King Henry the Third, who granted that Liverpool be a free Borough for ever, and that there be a Guild, and no person not of that Guild to make Merchandise there, unless with the free consent of the said Burgesses.

THAT King Edward the Third, and King Richard the Second, by their several Charters, confirmed those of King John and King Henry, adding a power to enjoy whatever they had formerly used or enjoyed.

THAT King Henry the Fourth, and King Philip and Queen Mary, confirmed all the former Charters.

THAT King Charles the First, the 4th day of July, 1626, granted a new Charter, and therein declares that the Mayor, Bailiffs, and Burgesses, and the greater part of them, may make from time good and profitable bye laws, statutes, and orders, in writing, for the well governing the said town, and the Burgesses, Tradesmen, and Inhabitants therein, and by another clause, further grants that they and their successors shall have all the lands, tenements, hereditaments, to them and their successors for ever, as an estate of inheritance, which they by any Charter, grant, title, use, custom, or prescription have formerly held and enjoyed, or might, or should have held and enjoyed, in any manner whatever.

THAT their last Charter was granted by your Majesty's predecessor, King William the Third, and dated the 14th day of October, 1695, which continued all former grants, and further ordained "that for the future, to preserve the peace, tranquillity, and good government of the town of Liverpool and its inhabitants, there shall or may be, for ever the Officers and Ministers following, viz. Forty-one good and discreet Burgesses, who shall be called the Common Council of the said vill," (town) omitting to give them the least power in express words; though it was the manifest, if not

the sole intent of this Charter, to give ~~forty-one~~ the power in the first recited clause of King Charles's Charter, in order to prevent the populous meetings of the Burgesses, upon every trifling occasion, as the town was so extremely increased since that time; and, therefore, from that time to this, such Common Councils' actings have been *acquiesced in to the great advantage and satisfaction of the whole town*. But it may hereafter cause disputes, unless the said Charter is explained for this purpose, by adding the clause of King Charles's Charter, or in such manner as your Majesty, in your great wisdom, shall think fit.

THAT the said Charter grants that the said Mayor, Recorder, Senior Alderman, and preceding Mayor, shall be the Justices of the Peace, which, as the town is so extremely increased, is found not to be a sufficient number for the distribution of justice, which may be easily remedied, if the Charter may be so explained that the preceding Mayor may act as justice for four years, which is three years more than is generally believed by the present words he could act.

THAT the said Charter appoints a recorder, but omits the power of making a deputy, which in so large a town may be very inconvenient.

THE said Charter gives, grants, confirms, and ratifies to the said Mayor, Bailiffs, and Burgesses, all their lands, tenements, fairs, and wastes, waste ground, and all hereditaments whatsoever, which they have held, used, or enjoyed, under any Letters Patent, or Grants, or after whatever lawful manner, law, title, custom, use or prescription, before the date of this Charter, or might so have held, used, or enjoyed. And your petitioners have for several hundred years been in possession of all the wastes, waste ground, and shore within the liberties of the said Corporation (which are publicly rode every year).

on part of which they have built a Church, and on other parts three Docks and several Walls, for the security of your Majesty's navy, when in that port, as well as for that of the town shipping, and will, if needful, extend them further, for such like or other good purposes, for the advantage of the said town in general, but as a doubt might hereafter arise, whether the waste shore is included under the general words aforesaid.

Therefore your petitioners most humbly pray, that your Majesty will be graciously pleased, in consideration of the above premises, to extend your royal favor to this ancient and loyal Borough, and grant to the said Mayor, Bailiffs, and Burgesses, and their successors for ever, your royal Letters Patent, and explanatory charter of the several doubts before mentioned, for the security of the royal Navy, and all the shipping in that port, and for the good government of all your Majesty's subjects, residing in the said town.

And your petitioners as in the strictest duty bound, shall ever pray, &c. &c.

REPORT

OF THE

ATTORNEY AND SOLICITOR GENERAL.

To the Right Honorable the Lords of a Committee of his Majesty's most honorable Privy Council.

MAY IT PLEASE YOUR LORDSHIPS.

In obedience to your Lordships' order of the 3d of May last, referring to us the petition of the Mayor, Bailiffs, and Burgesses of the Borough of Liverpool, setting forth amongst other things, that

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by a Charter granted to the said Borough, by his late Majesty, King William the third, dated the 26th of September, 1695. The Mayor, recorder, senior Alderman, and preceding Mayor of the said Borough, were appointed to be justices of the peace there; but that as the said town is since greatly increased, they were not found to be a sufficient number for the distribution of justice, and which the petitioners conceive might be remedied if the charter was so explained, as that the preceding Mayor might be empowered to act as a justice for four years, next after his being out of office; and the said petition further set forth that the said charter appointed a recorder of the said Borough, but without the power of making a deputy, which the petition represented as very inconvenient, and, therefore, the petitioners prayed his Majesty would be graciously pleased to grant unto the said Mayor, Bailiffs, and Burgesses of the said Borough, an explanatory charter of the several matters aforesaid, and in the said petition mentioned, for the good government of his Majesties subjects in the said town.

We have considered the said petition and charter, and have been attended by the recorder and also the town clerk of the said Borough, and agent for the petitioners, and they having waved every thing contained in the said petition, except the two matters herein before particularly stated, and having represented unto us that if besides the preceding Mayor's being continued a justice of the peace for the time in the petition mentioned, and the two Aldermen next to the senior Alderman of the said Borough, for the time being, should be appointed additional justices of the peace in the said Borough, it would still be of greater service in the distribution of justice in the said corporation, which is of late become very populous,

We are humbly of opinion, that his Majesty may, if he shall so please, grant his royal Letters Patent,

or charter, under the great seal, to explain the said former charter, and continue every Mayor of the said Borough to be a justice of the peace there, for the space of four years after the expiration of his office of Mayor, and also to appoint the two Aldermen of the said Borough next to the senior Alderman there, for the time being, to be additional justices of the peace in the said Borough, and also to give power to the said recorder of the said Borough, for the time being, to appoint a deputy to act in his stead, and to confirm the said Letters Patent in all other respects; all which is submitted to your lordships' consideration.

D. RYDER.

W. MURRAY.

12th of November, 1751

1751

COPY

OF THE

CHARTER OF LIVERPOOL.

OBTAINED

25. GEORGE II.

*GEORGE the SECOND by the Grace of God, &c.
To all to whom these presents shall come, greeting.*

WHEREAS our trusty and well beloved the Mayor, Bailiffs, and Burgesses of our town of Liverpool, in the county of Lancaster, have by their petition humbly represented to us, amongst other things therein contained, that by a Charter granted them by his late Majesty King William the Third, bearing date the 26th day of September, in the seventh year of his reign, the Mayor, Recorder, senior; Alderman and preceeding Mayor, were appointed Justices of the peace there, but that, as the said town is greatly increased, they were not found a sufficient number for the distribution of justice, and which the petitioners conceive might be remedied, if the Charter was so explained as that the preceding Mayor might be empowered to act as a justice for four years, after his being out of office as Mayor, and that the four Aldermen, while they remain members of the Common Council, might be appointed additional justices, to keep the peace in the said town, and in the liberties and precincts thereof.

AND WHEREAS the petitioners further represent, on account of the great increase of the town, it is become absolutely necessary; the petitioners there-

fore having most humbly prayed that we would be graciously pleased, in consideration of the premises, to extend our royal favour to the said town, and to grant the Mayor, Bailiffs, and Burgesses thereof, an explanatory Charter of the several matters aforesaid, for the good government of our subjects residing in the said town, we, taking the premises into our royal consideration, for remedy of the inconveniences complained in the said petition, and of the defect of the said Letters Patent, and for the explanation of the same, are graciously pleased to condescend to their request.

KNOW YE THEREFORE, that we of our special grace, certain knowledge, and mere motion, have granted, ordained, and appointed, and by these presents for us, our heirs, and successors, do will, grant, ordain, and appoint, that the present Mayor, and every person who shall at any time hereafter be Mayor, of our town of Liverpool, in the county palatine of Lancaster, shall continue to be and act as one of our Justices, to keep the peace in the said town, and the liberty and precincts thereof, for four years after the expiration of his Mayoralty; and we do further grant, ordain, and appoint, that the four Aldermen for the time being, next to the senior Alderman, while they remain members of the Common Council of the said town, shall be additional Justices to keep the peace within our said town, and the liberties and precincts thereof, and shall take the same oaths as are appointed by the said Charter to be taken by the senior Alderman, and in the said manner, and, also, that the present, and every future Recorder of the said town, shall have full power and authority to nominate and appoint some sufficient deputy in his, and their absence, or indisposition, in the said office. And our further will and pleasure is, and we do by these presents grant, and ordain, that the Mayor, Bailiffs, and Burgesses

of the town of Liverpool, in the county palatine of Lancaster, and their successors shall and may have, hold, and enjoy, all liberties, authorities, jurisdictions, franchises, privileges, lands, tenements, and hereditaments, whatsoever, granted by the said Letters Patent, and not altered by these presents, or which the said Mayor, Bailiffs, and Burgesses, or their predecessors, have had, held, or enjoyed, or might have had, held, or enjoyed by any other grants, Letters Patent, or by whatever other lawful manner, right, title, custom, use, or prescription, they have held and enjoyed.

AND LASTLY, we do by these presents, for us, our heirs, and successors, grant unto the said Mayor, Bailiffs, and Burgesses, and their successors, that these our Letters Patent, or the enrolment, or exemplification thereof, shall be in all things good, firm, valid, sufficient, and effectual in the law, according to the true intent and meaning thereof, notwithstanding the not truly reciting the said Letters Patent, or the date thereof, or any other omission, imperfection, defect, cause, or thing to the contrary, notwithstanding.

In Witness whereof, &c. &c.

The following Case was drawn up in the year 1749, and by the Common Council ordered to be laid before a good Counsellor for his opinion:—
 “Whether it was in the power of the Mayor, Bailiffs and Common Council, to make By-Laws for the good government of the town?”

CASE

FOR THE

CORPORATION OF LIVERPOOL,

Relating to their Power of making By-Laws and bringing Suits against Persons not free in the said Town, for keeping open Shops therein, &c.

THE Corporation of Liverpool, in the county of Lancaster, is an ancient Borough, formerly by prescription, but since incorporated by divers Charters, and by divers names; particularly by a Charter of the 4th of July, 2 Car. I. they were incorporated by the name of Mayor, Bailiffs, and Burgesses of the town of Liverpool, in the county of Lancaster.

By this Charter, the Mayor, Bailiffs, and Burgesses; for the time being, or the major part of them (of whom the Mayor and one of the Bailiffs to be two) on a public summons to be therefore to assemble themselves for that purpose, have a power to make by-laws.

By another Charter, dated 20th September, 7 Gul. III. the above Charter was confirmed; and it was also thereby declared, that there should be always forty-one of the Burgesses to be called a Common Council of the said town, and of which forty-one one should be yearly chosen Mayor, and two Bai-

liffs; and that any twenty-five, whereof the Mayor and one of the Bailiffs to be two, might do, ordain, execute and perform, all those things in as full manner as if all the forty-one were present. And in this Charter here is no power of making by-laws, except the above words will amount to one.

Of late years, many persons, not being free of this borough, have presumed to set up and occupy trades there, and keep open shops, against the ancient customs of the said borough; to restrain and prevent which, a particular by-law was made, which is hereto annexed.

You will be pleased to observe, this by-law is said to be made at an assembly of the Mayor, Bailiffs, and Burgesses; but it does not say, that the Mayor and one of the Bailiffs were two of the people present, as it is apprehended it ought to have been; and for want of which words the Corporation are advised the by-law is bad: and that, as these words are not in the by-law, it will be presumed they were not present.

It is also doubted, whether the Common-council have a right to make by-laws? or, whether such laws might not to be made by the Mayor, Bailiffs, and Burgesses at large? And if so, it will be impossible to make a new by-law: for though the Mayor, Bailiffs, and Common council would gladly make a new by-law, or do any other act in their power to redress this grievance; yet, if they are forced to let in the whole body of Burgesses, there are by much the greater number of them, who would side with the non-freemen, and not consent to the making any such by-law.

You are therefore desired to consider the two Charters, and give your opinion, whether the by-law already made is good, or not; and if bad, how it must be now made; and whether by the Common Council, or by the Burgesses at large. And please.

to look into the declaration herewith, and advise, whether this general action will lie; or, whether it must be an action of debt on the Charter and by-law; for the penalty mentioned in such by-law.

ANSWER.

I HAVE perused the copies herewith left, of King Charles the First, and King William's Charters of the town of Liverpool, and of a declaration of the Mayor, Bailiffs and Burgesses of Liverpool, against John Fazakerly; and of a by-law made, or intended to be made, to exclude foreigners from exercising their trades in the said town.

And 1st, As to the declaration; I conceive it is not good, but demurrable, and cannot be helped by any amendment; for it must be intended as a declaration in an action upon the case against the defendant, for exercising his trade of a silversmith in Liverpool, he being a foreigner, contrary to the custom of the town; to the damage of the said Mayor, Bailiffs and Burgesses, in their public capacity; which action, I conceive, is not maintainable, nor the practice of foreigners exercising trades there, contrary to the custom, to be suppressed, otherwise than by a PROPER by-law.

2dly, As to the Charters; the power of making by-laws given to the Corporation by the first Charter, is given to the Mayor, Bailiffs and Burgesses in general; and so it is no more than what the law has given them, without any such clause inserted therein, that power being incident to all Corporations: and the second Charter doth not extend to give the Mayor, Bailiffs and Burgesses, or any twenty-five (the Mayor and one of the Bailiffs being two) power to make by-laws: but it is to do all such things as the forty-one of the Council may do.

H

by that Charter; and there is no power given to them by that Charter to make by-laws.

3dly, As to the by-law, it is built on a proper foundation, viz. that of an immemorial custom to exclude foreigners; for custom, in that respect, is stronger than any royal grant by Charter; and as the custom is founded in the prescription corporate body, without giving them any special power to make by-laws by a select number, or description of particular members of that body, which might have been provided for by the last Charter, or may be by any future Charter; I do not see how a good by-law can be made, otherwise than by the Mayor, Bailiffs, Common Council, and Burgesses, upon a previous public notice of an assembly, to make by-laws for the good government of the town and borough; which assembly ought to be open for the Freemen and Burgesses of the town to meet.

JO. BELFIELD.

(COPY) 1749.

*Copy of the Oath taken by every person admitted a
Member of the Common Council of Liverpool.*

You shall do your reasonable endeavours, from time to time, for the furtherance and advancement of the common profit and commodity of this town, and to your power shall maintain the liberties and franchises thereof without doing or committing any act or thing, willingly or wittingly, whereby the same may in anywise be impaired or infringed. And shall further from time to time be ready to attend upon the Mayor of this town, or his deputy, upon lawful monition and summons to you given, at all and every assemblies by the Mayor or his deputy to be appointed within this said town, touching the affairs of the same; unless you shall be otherwise licensed by the said Mayor or his deputy, or have any other lawful impediment. And at the said assembly or assemblies, you shall pronounce and declare your opinion and advice, sincerely and plainly, without favor or affection, hate or malice, to be used in anywise, in such causes or matters as shall then be propounded or moved unto you, as one of the Common Council of the said town; and your own counsel, and your fellows, touching such matters as shall be moved in the said assemblies, you shall not reveal or disclose, *without just cause or reasonable occasion*; and likewise you shall do your lawful endeavour that all and every article, matter and thing concluded and agreed upon in the assembly or assemblies by the Mayor or his deputy, the Aldermen and Common Council, or the greater number of them, shall and may be put in due execution and truly performed according to the content thereof; and all and every other matter and

thing appertaining to be done by you, as one of the Common Council of the town, you shall do and accomplish to the best of your power and knowledge.

So help you God.

The following is an extract from the Act of Parliament passed in the 2 Geo. III. relative to the Docks, &c. which gives the Mayor, Aldermen, Bailiffs and Common Council the power of making "by-laws for the better regulating, &c. the said Docks," &c.

"AND be it further enacted by the authority aforesaid, that it shall and may be lawful to and for the said Mayor, Aldermen, Bailiffs, and Common Council, or the major part of them, in Common Council assembled at any time or times hereafter, to make, ordain, and establish, such orders, rules and by-laws, for the better regulating, governing, and managing the said docks, piers, graving-docks, light-houses, lights, buoys, land-marks, beacons, or perches, and every other the works and things herein before mentioned; and also from time to time, as occasion may be, to repeal, add to, amend, or alter such rules, orders, and by-laws, as to them shall seem meet, fitting, and requisite, and to fix and appoint reasonable pecuniary penalties, not exceeding forty shillings, for the non-observance, non-performance, or other breach, of all or any such rules, orders, or by-laws, or any part of them, to be recovered by such ways and means as are herein-after directed: And the said Mayor,

Aldermen, Bailiffs, and Common Council, shall cause the said rules, orders, and by-laws, to be printed and distributed at the dock-office in Liverpool, and likewise hung up at the said office, and in the most conspicuous place at the custom-house, and to pay the expense and charge thereof out of the said dock duties."

that the said rules, orders, and by-laws, shall be printed and distributed at the dock-office in Liverpool, and likewise hung up at the said office, and in the most conspicuous place at the custom-house, and to pay the expense and charge thereof out of the said dock duties."

A
SUMMARY
OF THE
PROCEEDINGS
OF THE
BURGESSES AND COMMON COUNCIL,
FROM THE REIGN OF ELIZABETH TO THE PRESENT TIME,
WITH REMARKS, &c.

THE first Charter granted to this Borough, was by King John in the 9th year of his reign, by which is granted to all his subjects, that have taken burgages, all liberties and free customs in the town of Liverpool, which any free Borough on the sea hath.

King Henry the third, in the 13th year of his reign, by his Charter, grants, that the town of Liverpool should be a free Borough for ever; and that the Burgesses should have a Guild Merchant; and that no person, not of that Guild, should make merchandize there, without the free consent of the Burgesses; with divers other privileges and liberties.

King Edward the first, also granted a Charter to this Borough, but the contents of this Charter are not now known, it being either lost or mislaid. King Edward the third, by his Charter granted in the 6th year of his reign, inspects the Charters of King John and King Henry the third, and confirms the same.

King Richard the second, by his Charter in the 13th year of his reign, inspects the Charters of King

John, King Henry the third, and the confirmation Charter of Edward the third, and confirms those Charters and grants, to the Burgesses of Liverpool aforesaid, their heirs, and successors, that no person, which shall not be of that Guild, shall do any merchandize in the said Borough, without the will and consent of the Burgesses, with power to enjoy and use what had formerly been constantly used.

King Henry the fourth, in the first year of his reign, recites the Charters before granted to the Borough, and then confirms all in those Charters contained, to the Burgesses their heirs, and successors, as the Burgesses and their ancestors had used and enjoyed the same.

King Philip and Queen Mary, by Charter in the second and third year of their reign, inspect the Charters of King Richard the second, Edward the third, Henry the third, and John, and then approve, ratify, and confirm the same to the Burgesses, their heirs, and successors.

Under these Charters the affairs of the Corporation were anciently transacted by general meetings of the Burgesses at large assembled in Common Hall; where they chose their officers annually on St. Luke's day, and made bye-laws for the good government of the town.

These meetings were in all probability not very numerous; but as the population of the town increased, the inhabitants found it necessary to intrust the direction of some part of their public

business to a select body, who were yearly nominated, and varied in number as circumstances required. In the year 1558 (as appears by a letter from the Corporation to Queen Elizabeth,) there were only 13 vessels belonging to this port, viz one of 100, one of 50, and eleven under 30 tons; and in 1665, the whole number of freemen was 184.

In the former mentioned year, sixteen persons were chosen to be a Privy Council, and that it was afterwards ordered that twelve Burgesses should be every year named, to order all things necessary for the Common-hall; this number was afterwards again changed to sixteen; but notwithstanding these delegations, Common Halls or public meetings of the inhabitants still continued to be held for the general transaction of the business of the town.

The first indication of the existence of a Common Council appears in a bye-law, or resolution made in the mayoralty of Edward Halsall, in the reign of Queen Elizabeth, Anno. 1579. The following is a copy from the Corporation record:

"At an assembly holden in the common hall of the town, on the fourteenth day of January, in the twenty-second year, of the reign of Queen Elizabeth, before Mr. Mayor and all his brethren, the Alderman of the town, and a great number of the Common Burgesses of the same, then and there, assembled, upon good consideration had, for the reformation of divers disorders, have condescended and agreed as follows: viz. for as much as upon due consideration of the ancient customs of this town, it seemeth there ought to be among other things, a Common Council within the same, of the Mayor, Aldermen, and twenty-four others, of the most discreet and substantial free Burgesses, inhabitants thereof, by whose discretion, or the greater number of them, in their common assemblies, within the rest of the commonalty, for so in their Constitutions is most commonly used, all causes touching the common-

wealth and good government of this town, ought from time to time to be ordered and disposed, which said good usage, by usurpation of late disordered assemblies of whole commons, wherein through the variety of opinions of such a multitude, seldom any good success has ensued; that in effect there remaineth no memory thereof at all, saving that twenty-four burgesses still every year being unpannelled and sworn at the next Port Moot Court holden after the election of the Mayor, to inquire of offences past, have further, for the remembrance of the said former customs, taken upon them to prescribe rules and orders for the government of the said town which by reason that the Mayor and Aldermen have not been parties therunto, have been seldom kept or observed, wherefore this Mayor for this present much minding, hath desired a reformation, and it is now therefore at the request of the said Mayor, and in hopes of the advancement of the said town, concluded and fully agreed, by the whole assent and consent aforesaid, as well of the Mayor and Aldermen, as of all the Commons at this present assembled, that the said late usurped assemblies of the Commons shall be abolished, and that from henceforth, the said ancient custom of Common Council shall be restored and inviolably used and observed.

That if any of the said Council shall happen to avoid by death or otherwise, that then the rest of the said Council which shall remain, or the greater number of them, shall in the next Common Assembly after such voidance had, elect and choose another to supply that default, and so as often as any such want shall happen to be, others from time to time to be chosen then in place, so that the Common Council be not decayed in number, &c.

This singular bye-law, or order, upon which the Common Council of the present day are said to found their right to elect the members of their own body, by whatever authority it was ordained, did not prevent the Burgesses from continuing to assemble together, and frequently transacting their own concerns, till the year 1626, when Charles I. granted the Charter, which is yet considered as the constitution of the place. By this Charter he gives to the Mayor, Bailiffs, and Burgesses, a power of making bye-laws for the government of the town; but no notice whatever is taken of any select body act-

ing at a Common Council, nor is any Common Council appointed by that Charter. In the following year the Burgesses, however, met together, and nominated a Common Council, who under such authority, but not under that of the Charter, took upon them the direction of the concerns of the Corporation, and frequently filled the vacancies that arose in their own members. In 1662 several of the Aldermen and Common Council-men, together with the Town Clerk, were removed from their offices, by commissioners appointed under the 13th of Charles II. for refusing to take the oath therein prescribed, from which it may be inferred that they were at this time considered as established officers of the Corporation.

The Common Council thus purified by the court, seem to have formed a plan for vesting in themselves and their associates all the powers of the Corporate body, independent of the Burgesses; which they actually accomplished by obtaining a new Charter from King Charles II. in 1667, which appointed in express terms a Common Council, to consist of sixty persons who were therein nominated, thirty of whom, together with the Mayor and Bailiffs, should have power to elect and name the Mayor, Bailiffs, and Common Council, and freemen of the town; thereby concentrating the whole power of the Corporation in the Common Council themselves. The Burgesses at large protested against this Charter, even several of the council therein named refused to

act under it; and some tumults took place in the town; but the spirit of the times stifled all opposition, and the Common Council continued to exercise the whole authority, till the Charter of William III. introduced other regulations.

It seems, however, that the Corporation were not yet sufficiently dependent on the court, for in 1684, Chief Justice Jefferies demanded on the part of the King, a surrender of the Charter, which was delivered up to him, and immediately returned to the Mayor. This being supposed to be a surrender of the privileges of the town, application was made to King James II. for a new Charter, which was accordingly obtained, and which directed that the Common Council *should consist of sixty-one, including the Mayor and two Bailiffs, and that the council should be elected by such persons as had theretofore been accustomed to elect them*, or in other words, granting them an express power to elect each other independently. But the most extraordinary part of this Charter is a reservation of a power in the King to remove all the officers of the Corporation at pleasure. This power he did not fail to exercise, by removing such as were obnoxious to him; which so alarmed the council, that on the 12th of September, 1688, they made an order, that with all submission and humble deference to the power of suspending any officer in this Corporation, James Prescott Esq. Mayor for the time being, shall safely keep the good name and good with all other real and per-

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sagel estate of the Corporation, and all that administers the same, for the defence of the rights wherewith he is now entrusted, until a successor be legally chosen; and sworn according to our present Charter, and the ancient custom of the Corporation.

Soon after the revolution, the Common Council obtained a new exemplification of the Charter of Charles II. and disavowed that of James, as having been founded on a pretended surrender of privileges which were never recorded. The Charter of Charles II. gave them the full command of the Corporation, without subjecting them to removal at the will of the crown. But great changes had now taken place in public opinions; and applications were made to the King for a Charter which might restore to the Burgesses their ancient rights. The Common Council were apprized of these attempts, and endeavoured to counteract them, as appears by an order of the 29th of March, 1685, in which the latter notice that *endeavors are used to take away or make void the Charter of Charles II. under which the Corporation derives many great privileges and immunities, and direct that the Mayor and Bailiffs shall at the expense of the Corporation, use their utmost endeavors to preserve the same*; but these endeavors were ineffectual, for on the 26th of September, in the same year, King William III. granted the now subsisting Charter of this place.

The contests which have arisen between the Burgesses and the Common Council respecting the con-

execution of this Charter, the legal attempt to end such disputes by an appeal to a court of justice, with the solemn verdict given by two Juries, in favor of the Burgesses at large, are matters of considerable importance, and deserve the attention of the Burgesses of this town.

The Charter of William III. recites in the same words the Charter of Charles I. and confirming the same; it proceeds to notice "that a few of the Burgesses of the town aforesaid, by a combination among themselves: without the assent of the greater part of the Burgesses of the same town, and without a surrender of the beforementioned Charter, or any judgments of Quo Warrantis, or otherwise, given against the same, have procured a new Charter, under the seal of the county palatine of Lancaster, to be granted to the town aforesaid, bearing date the eighth day of July, in the twenty-ninth year of the reign of the late Lord Charles II. in which sundry material changes were designed to be made in the government of the said town."

The Charter then appoints a Common Council of forty-one Burgesses, one of whom shall be Mayor, and two Bailiffs, and by a subsequent clause, that upon the removal or death of any of the Mayor, Recorder, Town Clerk, Bailiffs, or Common Council, another fit person shall be elected by such persons, and in such manner, time, and form, as in that particular was used and accustomed before the making the Charter of Charles II.

It is observable that this clause, which relates to the election of the officers, is in the same words as the clause respecting election in the Charter of James II. except that in that of James, the election is directed to be *as theretofore accustomed*, and in that of William, it is directed to be made in the same manner as *before the Charter of Charles II.* at which time the Common Council *did not exist by Charter, but by delegation from the Burgesses.* The Charter of William III. further directs that the Mayor shall be chosen *by the Burgesses out of the Common Council.*

Under this Charter it might have been expected that the Burgesses would again have entered upon the exercise of their rights; for although the Common Council is, by the Charter of William III. made an essential part of the constitution; they derive no legislative power therefrom, separately from the body of the freemen; and although the Common Council seem to think they have, or ought to have, the power of making by-laws, the Burgesses contend they have not, both because no such power is expressed; and more especially, because the charter was granted by King William *at the request of the whole body*, expressly as a relief from an injurious Charter, obtained from King Charles II. by surreptitious, fraudulent, and undue practices, and with manifest intention to invade the rights of the Burgesses. The principal thing in which that Charter was justly deemed oppressive and injurious.

and matter of public grievance and complaint was, that thereby a Council was empowered to make by-laws, binding upon the Corporation, without their concurrence, to the diminution and injury of their liberties and privileges.

It cannot be thought likely that King William's Charter could intend to put that power into the hands of *forty-one* Burgesses, as a Common Council, which it was purposely granted to take out of the hands of a council of *sixty-one*. The power of making by-laws was originally, and by the Charter of Charles I. placed in the Mayor, Bailiffs and Burgesses; the same was continued and confirmed by the Charter of William III. with the addition of a Common Council, to be as guardians or superintendants of the public immunities, and to be a constant supply of substantial Burgesses proper for magistracy. The members of this Council are sworn to act sincerely and uprightly for the good and support of that Corporation to which the Charters have given an existence and constitution.

By the Charter of Charles I. now recognized as the constitution of the borough, no Common Hall or Assembly of the Burgesses could be held without the assent of the Mayor, and one, at least, of the Bailiffs. By that of William III. the Mayor and Bailiffs must be chosen from the Common Council. The Council then existing, still continued to elect each other; and all that was necessary, therefore, on their parts, for securing to themselves the

whole government of the town, was to elect only such persons into the Council as they were satisfied would not call together the Burgesses for the purpose of making by-laws, nor be present at such meeting; and with such prescription have they conducted themselves, that more than a century has elapsed without the Burgesses at large having been able to avail themselves of the privileges intended to be granted to them.

This total extinction of their ancient rights has not, however, been submitted to without various struggles. In the year 1735, James, Earl of Derby, then Mayor of the town, with the concurrence of the Bailiffs, called together the Burgesses in Common Hall. The assembly was accordingly held, and sundry by-laws made. But the Earl dying in the following year, the Common Council again assumed the whole authority, and dismissed the two Bailiffs from their office of Common Council-men, declaring in express terms, that in holding the said Common Hall, they had acted manifestly in breach of the trust reposed in them as Common Council-men of this borough.

*The following is a Copy of the Order of the
Common Council.*

"At a special Council held the 23d day of September, 1736: Whereas since the holding of the last Common Council, that is to say, about the month of July, 1735, in the Mayoralty of the Right Honorable James, Earl of Derby, the then Mayor, and the Bailiffs, did take upon them in an arbitrary and illegal manner, to synuon or hold a meeting or assembly, at which were present the said Mayor and Bailiffs, and a small number of the Burgesses of this Corporation, which meeting they thought fit to call a Common Hall, and then and there pretended to make certain orders, or by-laws, relating to the government of this Corporation, contrary to the Charter and immemorial usage; which arbitrary proceedings this Court taking into their consideration, it is hereby declared, that the said meeting is illegal!"

"Every one who attends to the Charter of Charles the First, ratified and confirmed by that of William the Third, will find that it granted in express words, that *the Mayor, Bailiffs and Burgesses of the town aforesaid, for the time being, or the greater part of them, of whom the said Mayor and one of the Bailiffs of the town aforesaid, for the time being, to be two, upon public notice thereof given for that purpose, assembled, may and shall have power and authority of granting, constituting, ordaining, and making, from time to time, any reasonable laws, statutes, constitutions, decrees and ordinances, in ordaining, &c. for the good rule and government of the town aforesaid.* and yet, in direct opposition to the Charter, the said meeting have pretended to make certain orders, or by-laws, relating to the government of this Corporation, contrary to the Charter and immemorial usage; which arbitrary proceedings this Court taking into their consideration, it is hereby declared, that the said meeting is illegal!"

gistrate, and the Bailiffs and Burgesses of the town, *as illegal and arbitrary!*

There is, however, reason to presume, that, notwithstanding the authority exercised by the Common Council in making by-laws for the government of the town, they could not divest themselves of some doubts as to their power so to do, under the subsisting Charter. In order, therefore, to prevent all further opposition, they applied, in the year 1751, to Geo. II. to grant them a new Charter.

The following particular relating to this business may not be generally known, as at the time the Burgesses at large were not made acquainted with it. The petition for the Charter was drawn up in London, and sent down to Liverpool to have the common seal of the Corporation put to it, which was done at a Council meeting the *third of April*; at which meeting *twenty-five* members only were present, and those enjoined to secrecy, viz. James Gildart, Esq. then Mayor, Aldermen William Pole, Edward Trafford, William Carr, Owen Pritchard, James Bromfield, Joseph Bird, Thomas Shaw; Mr. Richard Blundell Bailiff; Mr. James Kellsall, Mr. Ralph Mercer, Mr. William Penket, Mr. John Colquitt, Mr. Edmund Rigby, Mr. William Heraby, Mr. John Ashton, Mr. Richard Cribb, Mr. James Crosbie, Mr. Charles Gore, Mr. Lawrence Spencers, Mr. Spencer Steers, Mr. Edward Forbes, Mr. Thomas Bell, Mr. Henry Winstanley, and Mr. Francis Gildart, Town Clerk.

The petition states the former Charters, and particularly that of William III, which as the petitioners say (though not very accurately) ordained, *that for the future, to preserve the peace and tranquillity, and good government of the town of Liverpool and its inhabitants, there shall or may be forever, the officers and ministers following, viz. forty-one good and discreet Burgeses, who shall be called the Common Council of the said town, omitting (as they say) to give them the least power in express words; though it was the manifest, if not the sole intent of this Charter, to give forty-one the power in the first recited clause of King Charles's Charter (the power of making by-laws) in order to prevent the populous meetings of the Burgeses upon every trifling occasion, as the town was so extremely increased since that time. They then suggest to the King, that it may hereafter cause disputes, unless the said Charter is explained for this purpose, by adding the clause of King Charles's Charter, or in such manner as his Majesty in his great wisdom should think fit. In plain language, they requested the King would give to the select body of the Common Council, the same power of making by-laws which the body at large possessed under the Charter of Charles I. and they conclude with petitioning that the Mayor may act as a justice of the peace for four years, and that the Recorder may have power to appoint a deputy.*

This petition was referred to the then Attorney

and Solicitor General, Sir Dudley Ryder, and Mr. (afterwards Lord) Mansfield, who recommended to withdraw the whole of their petition, except such as related to the appointment of Justices of the Peace, and the nomination of a deputy Recorder, to which they prudently assented, and on the report of the Attorney and Solicitor General, a new Charter was then obtained, which granted their request, and confirmed all former privileges; but which left the Common Council, as to their legislative authority, in the same situation in which they stood under the Charter of William III. to which

This disappointment made no alteration in the conduct of the Common Council, who continued to nominate their own members as occasion required, and to make regulations or by-laws for the government of the town; but it is observable, that *as a result of resistance, these by-laws were never enforced by legal proceedings.* In fact, few of these by-laws have at present any active existence, the town being governed, and the police regulated, chiefly, under the authority of various Acts of Parliament which have been obtained for that purpose; but the receipts and expenditure of the large income of the Corporation rested intirely with the Common Council, who never audited or published their accounts, or communicated to the Burgesses at large any information as to the real state of their concerns.

In the beginning of the year 1791, these grievances being taken into consideration by a great num-

ber of the resident Burgesses, a requisition was subscribed by ONE THOUSAND and TWENTY-EIGHT FREEMEN, addressed to John Sparling, Esq. then Mayor of the town, and Robert Moss, and Clayton Tarleton, Esqrs. Bailiffs, desiring them to call a Common Hall, or General Assembly, of the Burgesses, for the purpose of considering on certain propositions intended to be laid before them at such meeting. Those Magistrates thinking it their duty to comply with the request of so large a body of their constituents, returned the following answer:—

The Mayor and Bailiffs having taken into their most serious consideration the requisition signed by one thousand and twenty-eight of the free Burgesses of this borough, for the holding of a Common Hall, and having received the sanction of the opinions of three eminent counsellors to the legality of such assembly, conceive it to be their duty to comply with the request of so very decided and respectable a majority of the resident Burgesses, their constituents; and have, therefore, with a view to put as speedily a termination as possible to the present disputes, by appointing an early day, fixed on Monday the 17th of this inst. January, for the holding of such Common Hall, or assembly, in the Court Room within the Exchange, at ten o'clock in the forenoon of the said day, and for which purpose they will immediately issue their proper precept or summons.

In pursuance of such determination, the Mayor and Bailiffs also issued the following advertisement, with the propositions intended to be laid before the meeting, which having received the sanction of the Burgesses at large, were there passed into laws.

At the Requisition of a numerous body of the Burgesses, presented to the Mayor and Bailiffs.

THE Burgesses of this borough are hereby desired to appear in the Court Room, within the Exchange, on Monday, the 17th day of January inst. at ten o'clock in the forenoon, of the same day, at a general assembly of the Mayor, Bailiffs, and Burgesses, of the said borough, then and there to be held; to transact several matters and things of and concerning the said borough, and particu-

lary to take into consideration the following propositions, which in consequence of the said requisition, will be laid before the said Mayor, Bailiffs and Burgesses, for their approbation, and then had there to be assented to, and to be established and passed into by-laws, if they shall be thought proper, and to fill up the vacancies in the Common Council of this borough. Dated the 7th day of January, 1791.

JOHN SPARLING, Mayor,
ROBERT MOSS,
CLAYTON TARLETON, } Bailiffs.

Proposal I.—It is proposed, That all and every by-laws, regulations, and agreements, at any time or times heretofore made by the Mayor, Bailiffs and Burgesses of this borough in Common Hall, or in any other manner assembled, or by the Common Council of this borough, or the major part thereof, or by any other body of men whatsoever, whereby power is given to the said Mayor, Bailiffs and Common Council, or to the Common Council only, or the majority, or any number of them, to elect, appoint, or swear in any person or persons to fill up any vacancy or vacancies in the Common Council, whether occasioned by death, removal, or departure from office, or refusal to stand, or in any other manner, or by any other means, shall be repealed, abrogated, annulled, and made void, to all intents and purposes whatsoever.

Proposal II.—It is proposed to elect five Common Council-men of this borough, in the room of John Blackburne and James Gildart, Esqrs. who are deceased, in the room of Ralph Earle and Thomas Wilson, Esquires, who resigned their offices of Common Council-men, and are since deceased; and in the room of John Crosbie, Esquire, who, by surrendering his franchise as a Burgess of this borough, has vacated his seat as one of the Common Council of this borough; and to swear in the persons (so to be elected Common Council-men) in the usual manner into their offices.

Proposal III.—It is proposed to resolve that the town's treasurer shall draw out an accurate account of all the money by him officially received and paid since he came into office, until the 18th day of October last, and deliver the same with all due speed to the worshipful the Mayor, that he may order the same to be properly audited by four of the Common Council, to be named by that body, and four of the Burgesses, not of the Common Council, to be named at the Common Hall, to whom shall be added, the Mayor of the Town for the time being; and the majority of those nine persons to proceed to business, when summoned by the Mayor, as if the whole number was present: And henceforth the Corporation accounts of all monies to be hereafter received, paid and expended by the town's treasurer, shall be annually made out

down to the 18th day of October, in each year, and audited by the same number of persons, to be nominated as aforesaid, annually, on the 18th day of October, immediately after the Mayor shall be chosen.

The officers of the Corporation, having in obedience to the commands of the Common Council, refused to comply with the tenor of such by-laws, or to produce the books of accounts, for the inspection of the persons thereby appointed, and there being no penalties affixed to the non-performance of the by-laws, another Common Hall was held on the 16th day of June, 1791, when the following proceedings took place:—

**"AT A COMMON HALL, OF GENERAL ASSEMBLY, of the
MAYOR, BAILIFFS, and BURGESSES, holden in the Court-
Room on Thursday, the 16th Day of June, 1791.**

PRESENT,

JOHN SPARLING, Esq. Mayor,

**ROBERT MOSS, and
CLAYTON TABLETON, } Esqrs. Bailiffs,**

Alderman JOHN BROWN,

Alderman JOHN GREGSON,

Mr. HENRY BLUNDELL, and a great number of the Burgesses,

*The following By-Laws being proposed, and seconded, were
assented to and passed, without One dissentient Voice.*

1. "IT is enacted, ordained, constituted, decreed, and declared, by this Assembly, that if any Common Council-man of this borough, resident within the same, being duly summoned by special summons to attend any meeting of the Common Council of this borough shall absent himself therefrom, without license from the Mayor of the town for the time being, or his deputy, or other lawful impediment, he shall for every such offence, forfeit and pay the sum of three shillings and fourpence.

2. "It is enacted, ordained, constituted, decreed, and declared, by this Assembly, that yearly, and every year, the Mayor, Bailiffs, and Burgesses, of this borough, assembled for the election of officers, on St. Luke's day, shall and may, immediately after the election and swearing-in of the new Mayor and Bailiffs (or such of them as may be then present) proceed to the filling-up of all or any of the vacancies in the Common Council of this borough, without any other previous notice, or summons, than that by law.

3. "It is enacted, ordained, constituted, decreed, and declared, by this Assembly, that yearly, and every year, the Mayor, Bailiffs, and Burgesses of this borough, assembled for the election of offi-

cers, on St. Luke's day, shall and may, immediately after the election and swearing in of the new Mayor and Bailiffs (or such of them as may be then present) proceed to do and transact all acts, matters, and business, relating to this town and borough, as they lawfully may at such Assembly, and grant, constitute, ordain, and make such by-laws, statutes, constitutions, decrees, and ordinances, as may be, from time to time, necessary or expedient for the good rule, government, and advantage of this town and borough, or the freemen or inhabitants thereof, without any other previous notice or summons.

4. "It is enacted, ordained, constituted, decreed, and declared, by this Assembly, that from year to year, from this time forward, a COMMON HALL, or General Assembly, of the Mayor, Bailiffs and Burgesses, of this borough, shall be annually held upon the second Wednesday in the month of April, for filling up the then subsisting vacancies in the Common Council of this borough, without further notice given, or summons made, of such COMMON HALL, or General Assembly.

5. "It is enacted, ordained, constituted, decreed and declared, by this Assembly, that, from year to year, from this time forward, a COMMON HALL, or General Assembly of the Mayor, Bailiffs and Burgesses of this borough, shall be annually held upon the second Wednesday in the month of April, for doing and transacting all acts, matters and things, relating to this town and borough, as may lawfully be done by the Mayor, Bailiffs and Burgesses, so assembled; and granting, constituting, ordaining, and making such laws, statutes, constitutions, decrees, and ordinances, as may be, from time to time, necessary or expedient for the good rule, government and advantage of this town or borough, or the freemen or inhabitants thereof, without further notice given, or summons made of such COMMON HALL, or General Assembly.

6. "It is enacted, ordained, constituted, decreed and declared, by this Assembly, that the present, or any future Mayor, may summon and call together the Mayor, Bailiffs and Burgesses of this borough in COMMON HALL, whenever he shall think fit, giving four days notice of the day, hour, and place of meeting, by a public notice or summons in writing, stuck up on the EXCHANGE, in this borough, and on one of the doors, of the Parish church of St. PETER; and by a notice advertised in one of the Liverpool newspapers, specifying in such notices the cause of their being called together, and that no other notice or summons shall be necessary.

7. "It is enacted, ordained, constituted, decreed, and declared, by this Assembly, that all the books, containing accounts of money, received and paid by the town's treasurer, for and on behalf of this Corporation, shall be, at all reasonable times, open to the inspection of the Mayor of the borough, for the time being.

8. " It is enacted, ordained, constituted, decreed and declared, by this Assembly, that if the town's treasurer, for the time being, shall, at any reasonable time, refuse to permit and allow the Mayor of this borough, for the time being, to inspect any of the books, or papers, containing accounts of money received and paid by him, for, and on the behalf of this Corporation, he shall forfeit, for every such refusal, the sum of forty shillings.

9. " It is enacted, ordained, constituted, decreed and declared, by this Assembly, that the by-law, order or resolution, made at the COMMON HALL, held on the 17th day of January last, whereby it was enacted, ordained, constituted, decreed and declared, by that Assembly, that the town's treasurer should draw out an account of all the money, by him officially received and paid since he came into office, until the 18th day of October last, and deliver the same, with all due speed, to the worshipful the Mayor, that he might order the same to be properly audited by four of the Common Council, to be named by that body, and four of the Burgesses, not of the Common Council, to be named at that COMMON HALL, together with the Mayor of the town for the time being; and that the majority of those nine persons, the Mayor being one, should and might proceed to business, when summoned, by the Mayor, as if the whole number were present, be, and the same hereby is repealed, annulled, and made void.

10. " It is enacted, ordained, constituted, decreed and declared, that Alderman Thomas Earle, Mr. Joseph Brooks, Mr. Henry Blundell, and Mr. John Shaw, being Members of the Common Council of this borough; and Mr. William Rathbone, Mr. Thomas Wakefield, Mr. Cornelius Bourpe, and Mr. Samuel Livesley, being Burgesses of this borough; together with the Mayor of the borough for the time being, shall be, and hereby are, constituted and appointed Auditors, to audit and examine the accounts of the present town's treasurer, and report the state thereof to the next Common Hall; and that the majority of these nine persons, the Mayor being one, shall and may, proceed to business, when summoned by the Mayor, as if the whole number were present.

11. " It is enacted, ordained, constituted, decreed and declared, by this Assembly, that the Auditors, appointed by this, or any future Common Hall, or any five of them, for the time being, the Mayor being one, shall, at all reasonable times, have access to, and be at liberty to inspect and make extracts from all such books and papers, of this Corporation, in the possession and custody of the town's treasurer, as contain entries of monies received and paid by him, for, and on account of this Corporation; and that if he shall refuse to permit them, or any five of them, assembled for that purpose, to inspect or make extracts from the same, or any of them, at any reasonable time, or times, he shall

forfeit and pay the sum of forty shillings for every time he shall so refuse.

12. " It is enacted, ordained, constituted, decreed and declared, that the Mayor and Bailiffs of this borough for the time being, or any, or either of them, shall have free access to, and may inspect the public books of this Corporation, or any of them, being in the custody of the common, or Town-Clerk of this borough, at all reasonable times, whenever they think fit: and, in case the Town-Clerk shall refuse to permit them, or any of them, to inspect any of the said books at such reasonable times, he shall, for every offence, forfeit the sum of forty shillings.

13. " Whereas informations, in the nature of *Quo Warranto*, have been granted against Richard Walker, Charles Caldwell, Peter Ellames, and Willis Earle, who were elected Common Councilmen of this borough, at the Common Hall held on the 17th day of January last, it is hereby ordered, that the said Richard Walker, Charles Caldwell, Peter Ellames, and Willis Earle, be defended in the said prosecutions at the expense of this Corporation; and that if any other prosecution or prosecutions, action or actions, suit or suits, have been, or shall be commenced, against the Mayor, Bailiffs or Burgesses of this borough, or any of them, or any other person or persons, for or on account of any act, matter, or thing done, or by-law, order, or resolution made, at the said Common Hall, held on the 17th of January last, or at this present Common Hall, such prosecutions, actions, and suits, and every of them, shall be defended at the expense of this Corporation: And that the Mayor and Bailiffs, or Mayor and one Bailiff, for the time being, may and shall demand, and receive from the town's treasurer, for the time being, all such sum and sums of money as shall be necessary for defending such prosecutions, actions, and suits, or any of them.

14. " Whereas it hath been represented to this Common Hall, that John Colquitt, Esq. Town Clerk of this borough, hath refused to lay, or cause to be laid, before the Committee, appointed by the Common Hall held on the 17th day of January last past, to inspect, review and consider the several by-laws, or supposed by-laws, of this Corporation, any of the books, papers, or documents, belonging to this Corporation, now in his possession, in order to enable them to carry the said by-laws into effect; and that a writ of *Mandamus* has been sued out of the Court of King's Bench, in order to compel him to do his duty in this behalf: it is hereby ordered, that the expenses incurred, or to be incurred, in the suing out and prosecuting that writ of *Mandamus*, and proceeding in any action, or information, founded thereon, be defrayed out of the funds of this Corporation.

15. " It is hereby ordained, enacted, ordered and decreed, that the Town's Treasurer shall not, in future, issue or pay any sum or

sums of money out of the Corporation estate, for the costs of, or in any way towards, defraying the expenses of prosecuting or defending any prosecution, action, or suit, whatsoever, without an order under the hands of the Mayor and Bailiffs, or the Mayor and one Bailiff, of this borough, for the time being, to him directed for that purpose.

16. " It is enacted, ordained, constituted, decreed and declared, by this Assembly, that the Mayor and Bailiffs, or the Mayor and one Bailiff of this borough for the time being, may, and they are hereby empowered to sue in the name and for the use of the Mayor, Bailiffs and Burgesses of this borough, for all or any of the forfeitures and penalties inflicted for offences against the by-laws, orders, resolutions or ordinances, made, enacted, ordained, constituted, decreed and declared by this Assembly, by action of debt.

17. " It is enacted, constituted and ordained, that the Town Clerk of this borough do forthwith enter the proceedings of the Common Hall, held on the 17th of January last, and the by-laws, resolutions, and ordinances, made thereat, in the public books of this Corporation: And that the worshipful the Mayor be requested to give directions accordingly.

18. It is enacted, constituted, ordained, decreed, and declared that the Town Clerk of this borough for the time being, shall, from time to time, make regular entries in the public books of this Corporation, of the proceedings at the Common-Hall, held in this borough, and of the by-laws, resolutions, and ordinances, made thereat: and that if he shall refuse, or neglect, to enter the same in the said books, for three days after he shall be requested so to do by the Mayor, for the time being, he shall forfeit, for every offence, forty shillings.

19. " Whereas it has been represented to this Common Hall and Assembly, that the Court of King's Bench hath been lately moved, by certain Common Councilmen, for leave to file an information against our present worthy Chief Magistrate, for not having obeyed an illegal ordinance, made so long ago as the year 1679, by persons usurping the character of Common Councilmen of this borough, under a pretended Charter of King Charles the Second (which was never accepted) whereby it was ordained, that the Common Council should meet on the first Wednesday in every month, and which by-law has never been recognized by the Burgesses in Common Hall: it is hereby declared, constituted, decreed and ordained, that the expenses incurred, or to be incurred, in the defence of the Mayor against such motion and prosecution, shall be defrayed out of the public funds of the Corporation.

Resolved, " That the thanks of this Assembly be given to the worshipful the Mayor, for his distinguished zeal and assiduity with which he has performed all the important and arduous duties of his office—for the attention with which he has watched over the inte-

rests of this town in general; and of the ~~free~~ Burgesses in particular—for his anxious care to prevent inconveniences to individuals, or the public, from the disputes at present subsisting between a few of the Common Council and the Burgesses at large, by calling not fewer than nine Common Councils, by special summons, in eight months, to transact the business of this Corporation—for giving, to the Burgesses this fresh opportunity of assembling in Common Hall, and the ability and impartiality with which he has conducted the business of this meeting.

Resolved, "That the thanks of this Assembly be given to Robert Moss and Clayton Tarleton, Esqrs. the Bailiffs of this borough, for their ready compliance with the wishes of the Burgesses; and for their continued adherence to the true interests of the town.

Resolved, "That the by-laws passed at the Common Hall shall be inserted in all the newspapers published in this town, twice in each paper.

(Signed)

JOHN SPARLING, Mayor.

ROBERT MOSS,
CLAYTON TARLETON, } Bailiffs."

In consequence of the foregoing by-laws, the Treasurer of the town, Thomas Golightly, Esq. was called upon to permit the persons appointed for that purpose, to inspect the books and papers of the Corporation in his possession, which being refused on his part, an action was commenced against him in the Court of King's Bench, for the recovery of the penalty of forty shillings. The cause was tried at the Lancaster assizes following, before Mr. Baron Thompson, Mr. Erskine being the leading counsel for the select body, and Mr. Sergeant Adair for the Burgesses, when the jury being of opinion that the power of making by-laws, was,

under the Charter of Charles I. recognized and confirmed by that of William III. expressly given to the Corporation at large, and the judge having directed them that no evidence of a custom ought to be admitted against the express words of a Charter, a verdict was given for the Burgesses.

A motion was afterwards made in the Court of King's Bench for a new trial, when, after a long argument, the judges of that Court were of opinion that the evidence of the custom ought to have been admitted, and directed a new trial accordingly. The cause was again tried in the following year, when the records of the town were produced and given in evidence; but the second jury were also of opinion that no practice could be legal that was in direct opposition to the clause in the Charter of Charles I. which gave the power of making by-laws to the *Mayor, Bailiffs and Burgesses in common-hall assembled, on public notice given for that purpose*, and gave a verdict against the claims of the Common Council.

A third trial was then moved for, which the Court of King's Bench, on what grounds does not appear, and although the proceeding is very unusual, thought proper to grant. But the expenses incurred in these proceedings, which were disbursed by individual Burgesses, added to the state of the times, and the consideration that the law has prescribed no limits to the authority of a court, in remanding a cause for trial, whenever it is not satis-

fied with the verdict, deterred the Burgesses from the further prosecution of their claim; and the Common Council, notwithstanding the decision of the two juries, still continue to exercise the exclusive power of the Corporation in the same manner as before these proceedings were commenced !!!

The report of the proceedings on these trials forms a large volume, and contains ample information on the subject in dispute between the Corporation and the select body which have claimed the privileges, and exercised the power granted to the Corporation at large. But as many into whose hands this publication may fall, may not have the opportunity of reading the full report, nor would probably have the patience to follow the counsel through the wide field of reasoning they chose on the occasion, the Editor flatters himself that the following short extracts from the proceedings published in 1796 will meet the approbation of his readers.

Sergeant Adair, after noticing the history of the Borough and its Charters, says—

“The records of the Corporation of Liverpool do not go back much more than a period of 239 years. The year 1555, I think, is the earliest record or book of the Corporation, that is at present preserved; I know of no other sources from which the ancient constitution of that Corporation can be traced; and from those records, anterior to the

Charter of Charles I. which is now the established Charter of the Corporation, modified in some respects by one or two subsequent Charters, it appears that there was no permanent Common Council in the Corporation of Liverpool at all, and I found that assertion from observing, that in the most early period of those records, all the business of the Corporation appears to have been actually transacted at general meetings, or assemblies of the Burgesses in common hall."

"The Common Council, about 40 years ago were very desirous that their usurpation should be confirmed by a Charter, if they could obtain it; and I will produce to you a petition from the Common Council complaining that there were no express words in their Charter, which gave them these powers; (*the power to make by-laws, &c.*) and say they to King George II. in the year 1751, 'his Majesty, King William intended to give us these powers, but he forgot to do it—he created a body of Common Council, and he forgot to give them any powers at all—he has created us without any powers, except what we have usurped to ourselves since that time, and now will you be so good as to give us these powers which King William intended to give us, and among the rest, pray be so good as to give us the power of making by-laws.' They did not forget that, it was too important to be overlooked; they therefore petitioned King George II. stating that

King William had intended to grant them these powers, but had forgot to do it.

“ You will see whether that is *true* or not : they were stating what was not true in fact, but a gross deception upon the face of the petition ; stating expressly, that King William had given them *no powers at all*. : Now he was not guilty of that absurdity, for he had given them several powers, and besides that there are certain powers, though unquestionably not that of making by-laws, which may be presumed to reside in the Common Council ; as for instance, that of assisting the executive magistrate, of meeting and giving a sanction to his authority, of advising him on particular occasions, &c. They state untruly, that King William had given them no power at all. They drew a pretty strong inference from that if it had been truth, that because he gave them *none* he meant to give them *every* power ; but that conclusion they drew, and therefore prayed that his Majesty, George II. would define their power by Charter ; and they pointed out one mode of doing it, say they, by repeating those words of the Charter of Charles I. and applying them to the Common Council. *That* would have done it *effectually* ; because then there could not have been stronger words made use of. If he had given the power of making by-laws to them in the same terms as Charles I. did to the Corporation, I should have had nothing to say.”

A conference was held between the Law Officers of the Crown and the Recorder and Town Clerk of Liverpool, when the latter, not being able to convince the Crown Lawyers that King William had forgotten to give them the powers he intended to have given, they very prudently gave up what was unquestionably the main object of the petition, and accepted of the other trifling grants, for which they had petitioned, to give the business a colorable pretext.

Mr. Erskine followed the learned Sergeant, and displayed much eloquence, and we have only to lament that he was not intrusted with a better cause, there is then no doubt that his arguments and his eloquence would have kept pace with each other; in this case his arguments turned more upon uncertain usage than upon legal rights and chartered grants. He seems disposed to attribute the splendor, prosperity, wealth, &c. of this growing town to the government of a select body, whose plans are laid in secret, and who regard themselves as accountable to no one, who choose their own members, and audit their own accounts, although those accounts relate to the property of the Corporation at large, and of which, to say the most, they can only be considered as stewards.

The following panegyric on Liverpool is highly finished.

"I don't know when my friend saw Liverpool; nor do I know (for I cannot go into the mind of

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another person) how he is affected with what he sees, but if I could describe my own feelings when I saw it many years ago, if I were capable of painting to you in words the impression it made on my imagination, it would make a beautiful picture indeed. I had before and often been at the sea-ports in this island which we inhabit, and believing that having seen Bristol, and those other towns which justly pass for great ones, I had seen every thing in this nation of navigators on which a subject should pride himself, I own I was astonished and astounded when, after passing a distant ferry and ascending a hill which overlooks the city, I was told by my guide, "All that you see spread out beneath you, that immense city, which stands like another Venice upon the waters, which is intersected by these numerous docks, which glitters with those cheerful habitations of well-protected men, which is the busy seat of trade, and the gay scene of elegant amusements growing out of its prosperity, where there is the most cheerful face of industry, where there are riches overflowing, and every thing which can delight a man who wishes to see the prosperity of a great community and a great empire; all this has been created by the industry and well-disciplined management of a handful of men, in a corner of the island, since you were a boy." I must have been a stone not to have been affected by such a picture, it was such a one, that if I had indeed the eloquence my friend was pleased to con-

pliment me with, I could bring tears into your eyes only by making it pass before you; but, however feeble the copy, you all know the existence of the original:

“This quadrangular village, which is now fit to be a proud capital for any empire in the world, has started up like an enchanted palace, even in the vicinity of living men, under a government founded in antiquity too dark to pierce the cloud of, and which my friend, with a smile, even now I am stating it, asks you to cut down and destroy, and to reduce it, to what? To a pageant of useless beings who are to wear fur, and to consume the fruits of the earth, and who are to have the sword carried before them, and that they should be shut up with their mice till a feast came round, in order that they might again exercise themselves. Under this new system of law, if there was any thing that wanted amendment in the most insignificant part of internal police, 40,000 inhabitants, all the laborious and industrious part of the community, are to be assembled to legislate for themselves; every man must be taken from his common occupation, and the most common by-law—for instance, for clearing the streets, fining a man for disobedience, voting that the dock gates should be mended, or half a pint taken out of the chest for any purpose—all this must be done by blowing a horn, sounding a trumpet, or ringing a bell, to bring 40,000 people from the happy exercise of their

which they are able to maintain their families, and live protected individuals under the laws of their country."

Mr. Erskine contended that the town had been governed by a Common Council before the time of Charles I. and that "this Council have uniformly, and without one single exception, made by-laws; chosen one another; and governed the town throughout the whole course of its magistracy; this they have done, and most peculiarly before the time of the Charter of Charles II. and at the time of William's Charter.

"No language can be more plain and explicit (than that of William's Charter) forty-one Common Council I constitute for ever. How to be chosen? As was used and accustomed before the Charter of the 29th Charles II. The Charter then goes into the execution of an office which was notorious; referring it to a usage of seventeen years back; and consequently notorious to every man. It says, "And he or they so elected and sworn shall exercise"—shall exercise what? Why the office. What office? The office of Common Councilman! But none was described! What reference could it have, then, but to a custom without which they could not put their fair cloak over their shoulders in a Common Hall! I appeal to your common sense, whether this Charter be intelligible, if there had not been a Common Council before the time of Charles II. with defined and

notorious powers to which he appealed, and which he made the type of this new creation, the exercise of an office is the exercise of the power belonging to that office; and if none be annexed by the Charter to it, what are the powers belonging to it, but such as had been practised and enjoyed, such as had existed before the Charter of Charles I.

Without saying that there can be no answer to this reasoning, let me ask you, whether my construction is not, at least, as fair a construction as the others that have been put upon it. Mine is consistent with reason; theirs is repugnant to it. Mine is consistent with the ancient practice; theirs is inconsistent with it. Mine is a distinct and permanent body for useful purposes; theirs the means of stirring up the very doubts which the Charter meant to destroy. Mine produces quiet and tranquillity, which it is hoped your verdict will establish, theirs nothing but confusion and disorder. For what else can spring from a body choosing one another, while a power lies behind annihilating the very existence of the body chosen? Chosen only for an empty name, without any solid purposes. The Charter directs a body to be elected as another body, then existing was elected, and directs that this office is to be exercised as before. Yet my friend says, when you look back to see what that office is, that no such office ever existed. Reject then, these dangerous novelties which are imposed upon you, and sanction by your verdict what

has so long continued. Preserve a due veneration for the institutions of high antiquity in an even unaltering course down to your own time. Let us believe that we are neither wiser nor better than our fathers. Let us not imagine that we understand what our interest consists in better than they who were the founders of our liberties, and who by their vigor and wisdom have given us our inheritance in it. Let us be slow to pronounce, with the arguments of to-day, that we have come from a generation of *fools* and *miscreants*, who have for ages given up those rights which are now, for the first time, to be protected. I cannot believe so, because the nature of man, the history of the world, and of our own particular country, all alike forbid me to enter into such strange belief. Make haste, then, to restore, by your decision, that content and unanimity which has peculiarly distinguished this place. Re-establish that harmony which, though it be ruffled for a moment, will pass over like those clouds which, sometimes you see infect the horizon, and droop our spirits, but which the sun speedily dispels and shines out gloriously.

"Gentlemen, I have now finished my address to you; I shall be satisfied with your verdict whatever it is; but at the same time, I have the most perfect confidence that my clients will receive it."

Serjeant Adair made a short reply to Mr. Eakin, after which

Mr. Baron Thompson: I think there is no

ground in this case to contend that the Charter of Charles the First has not been accepted *in toto*. I think the confirmation as it is called, of King William the Third is sufficient for that purpose; I think the recognition, also, in that petition which has been read, of the Charter of King William, amounts to the same effect; and I think too, that these statutes (this last petition especially) excludes any sort of evidence to be left to the jury, of any subsequent Charter contrary to those which are now on record.

“Then see how the matter stands upon the record. Whatever usage may have prevailed before the making of this Charter of Charles the First—I mean now with respect to the making of by-laws, because I lay the case of elections totally out of the case—whatever usage prevailed in this Corporation with respect to the making of by-laws, antecedent to the Charter of Charles the First, that Charter, supposing it to be made out from the entries in the books, that there was *no part* of this borough who had made by-laws, but those that are called the *Common Council*, supposing that to be the case, it seems to me, that the Charter of Charles the First has, in fact, established a *different power* and a *different body*, for the purpose of making by-laws; in other words, *it has given the power of making by-laws to that body in which it would reside in case the Charter had been silent*, with respect to by-laws.

that is, to the Mayor, Bailiffs, and Burgesses of this place, which was then intended to be incorporated.

“ So it stands upon the Charter of King Charles the First; and *any usage* contrary to that, would, in my apprehension *be void*, as contrary to the express directions of the Charter and the power given to this body to make by-laws. The Charter of King William, I take it, confirms the Charter of Charles the First, in every instance, in which it has not clearly varied from that Charter. It has varied from the Charter in some very material respects, with regard to the election, not only as to the mode of election; but with regard to the body out of which the governing part of this Corporation is to be taken; that is to say, it has not left the objects of election as under the Charter of Charles I. to be chosen out of the Burgesses at large, but it has narrowed the objects of election, and has confined them to persons who are to be of the Common Council; and which Common Council-men, it is observable to this purpose, are erected by this statute; they are constituted into a number of forty-one persons, and out of them the Mayor and the other persons are to be elected. The particular days of election are appointed, and those persons so to be called a Common Council, have certainly no definite authority at all delegated to them by this Charter, otherwise than in certain trifling instances of electing one or two different sub-officers in the

Corporation. That is all that is done with regard to them. It is perfectly silent as to giving them *any power whatsoever* of making by-laws; it has indeed referred to a practice prevailing in the Corporation, antecedent to the Charter, as it is declared of Charles II. as to their mode of being elected, and it has prescribed that all these members of the Corporation shall be elected in such mode as has been the practice for elections, and that must be elections in general, because there is a *new* office added here, that is to say, the office of *Recorder* which had not obtained before.

“ But as to any authority given to them that should operate as a power of repealing the authority of the Charter of Charles I. as to making by-laws, there is not any thing that glances that way; there ought to have been *express words* in order to repeat that which the Charter of Charles I. had *expressly vested in the Corporation at large*, and which provisions in that Charter I apprehend this Charter of William III. did not profess to touch, but as it has *expressly and in words* done it.

“ It seems to me to stand upon the Charter of Charles I. as to the power of making by-laws in this Corporation, and that evidence of *any usage* to the contrary ought not to be received against that provision, which is made by the statute of Charles I. giving power to the Corporation at large to make by-laws, which Charter as I can understand, is not at all touched or affected in this part of it. There-

fore it seems to me that upon this occasion the plaintiff has made out his cause of action; that is, having declared upon a by-law made by the *Mayor, Bailiffs and Burgesses*, under the Charter of Charles I. There can be no doubt but that this is a very good and a very wholesome by-law for the regulation and government of an officer of great trust in the Corporation; namely, the treasurer whether he is elected by one set of men or another seems to me perfectly immaterial; finding him there in the office of treasurer, and actually keeping accounts of receipts and payments to so very large an amount * as we have heard, it certainly is reasonable that this man should be compellable to produce his accounts at the request of the Mayor; and it seems to me therefore, that this action is well founded, this by-law having been made in consequence of an authority under the Charter of Charles I.

Verdict for the plaintiffs; damages forty shillings.

In the Court of King's Bench, in the Michaelmas term following, a second trial was moved for. Mr. Erskine was counsel for the defendant, and rested his motion on the ground of evidence having been refused. The Court granted a second trial.

* The evidence given to the Court on the examination of Thomas Taylor, clerk to Mr. Goughly, shows that the annual revenues of the Corporation at that time, independent of the income from the docks, was from £7,000 to £8,000 sterling.

which took place at Lancaster on the 23d of August 1792, in which Mr. Sergeant Adair was counsel for the plaintiffs, and Mr. Daw (now Lord Ellenborough) for the defendant.

Sergeant Adair addressed the jury as follows:—

1. "I take it to be a fundamental principle in all Corporation law, that all exclusive privileges and franchises which distinguish one body of the King's subjects from another, must have originally flowed from the grants of the crown. To whatever body these grants are originally given, the whole of that body, including all its constituent parts, becomes the Corporation, the whole, with the chief officer, by whatever name he happens to be called; *they and they only* are the Corporation in that place; none of the constituent parts have a right to call themselves by that name; they are members of the Corporation, they are frequently distinct bodies necessary to the action of that Corporation, but the Corporation itself consists of the head officer, and of the members without exception. It is extremely natural for select bodies of men, who enjoy, either by right or usurpation, the principal direction and management of a Corporation, to fancy that *they are the Corporation* and to call themselves by that name; but I will tell you that they have no right to assume that name, and that they are deceived in fancying that they are the Corporation.

" I have no doubt that if you have heard in any place this cause spoken of, you have heard it represented as I have already stated to you ; it is even probable you may have heard that I was counsel against the Corporation of Liverpool. Gentlemen, I beg leave to disclaim that character ; I am not counsel *against*, I am counsel *for* the Corporation of Liverpool ; I am counsel for the *Mayor, Bailiffs, and Burgesses who are the Corporation of Liverpool*, and I trust that your verdict to-day will teach those who fancy that they are the Corporation, that they are mistaken.

" In all Corporations there exists a right of making by-laws, which is essential for the purposes for which every Corporation is instituted, and where that right is not distinctly vested in any particular denomination of men within that Corporation, I will venture with confidence to state it to you, and his Lordship will confirm it, that it is vested in the *whole body* of that Corporation : that is the general law of the kingdom, unless a particular grant has directed it otherwise. Wherever, therefore, any other body in a Corporation than *the body at large*, who compose that Corporation claim or assume to themselves that legislative power which the common law of the kingdom vests in the *body at large*, it rests with them to show from whom they have derived it.

" Before the Charter of Charles II. there does not appear to have existed in Liverpool any perma-

ment of regular body as a *Common Council*, the first traces that are to be met with in this Corporation of any such body as a *Common Council*, are not a great deal more than 200 years ago, about 240 years ago are the first traces of it that any written evidence affords, not before the year 1556, and during that period you find the name of *Common Council* applied to various descriptions of men, varying in their numbers, varying in their capacities, varying in the mode of their election. The exercise of that authority which is usually vested in a *Common Council* was carried on sometimes by these particular bodies of men; sometimes by the freemen at large, who personally exercised their own rights. You will find that the powers of a *Common Council* were exercised by a *Portmote jury*. Perhaps it may be necessary to explain to you, in a few words, the general nature of that body in a Corporation.

"The *Common Council*, as such, can exercise no other authorities than what they derive either from the Charters of that Corporation, or what are allowed them by the Corporation itself. They are a body of men selected in general from the better sort of *Burgesses* to act, as their name imports, as a *Council* to the Mayor, they are not in their nature, nor by the general law of the kingdom, the *legislative body* of any Corporation in which they exist; they partake more of the *executive* power, for in truth they are the council of the executive power of

that Corporation, they are in their nature the assistants of the Mayor.

“ I have already told you, that by the Charter of William III. they are made a body permanent, and with perpetual succession; by the same Charter they have the power of removing themselves. It is not necessary for me now, to tell you, that in fact they have exercised the power, not *only of removing, but of electing themselves*, and that in exclusion of the burgesses at large. When I told you that they have assumed, and that they claim in defence to the present action the rights of legislation in this Corporation, I beg to know what will be left behind for the Burgesses! I beg to know what share *they* are to have in the management and control of that property and those revenues which belong to themselves, and I beg to know from you, gentlemen, whatever may be the conduct, whatever may be the merit of the individuals of which a small *select body* is composed, whether it is fit and proper that revenues which are held by them in trust for others should remain under their sole management and control, without the right of superintendence, without even check or inspection on the part of those whose revenues they are? Yet that is the constitution claimed by the Common Council of Liverpool.

“ Though that constitution may not, in fact, be abused, whether it is or not, I think I may appeal to

your common sense and good understanding; that of all constitutions it is most liable to abuse; Where persons make, themselves, the laws by which they are to be governed, accountable to none but themselves for their conduct; elected by each other, and therefore where abuse creeps in, abuse will be perpetuated; that a *junta* (for such they become by that description, however respectable that *junta* may be) that they should have the complete management of revenues amounting to upwards of 20,000*l.* a-year; wholly elected by *themselves*, accountable to nobody *but themselves*, and refusing all mankind even the inspection of the account of these revenues—whether that constitution is abused or not, I need ask no man of common sense, whether it is not of all others the most liable to abuse.

“ In the year 1791, the Burgesses having long complained of their total exclusion from the management of their own affairs, and of what they considered at least as usurpations, requested their worthy Chief Magistrate to assemble a Common Hall, which he, greatly to his honor, granted. That Common Hall exhibits a proof, as strong as one as ever existed, if any proof were necessary, that a body of the Burgesses at Liverpool are extremely fit and proper for the exercise of any rights that belong to them; for a more orderly, a more regular, and a more temperate assembly never met, I believe, even in the Council Chamber of Liverpool. They proceeded to a temperate assertion of those rights

which, upon reading the Charter, the meanest amongst them had sense enough to know belonged to them; and of those rights, the exercise of which you shall judge, when I read to you the very by-laws which are the subject of the present cause.

The learned counsel then read the by-laws (Nos. 7 & 8. p. 80 & 81) and remarked upon them.

"If," said he, "I were counsel on the other side, and if I were to find fault with this by-law, (No. 7.) it should be with nothing but the moderation of the penalty, instead of *forty shillings*, in my opinion, it ought to have been *hundreds of pounds*. An officer who is entrusted with accounts to the amount of *twenty thousand pounds a-year*! ought to be talked to in a different style than the forfeiture of *forty shillings* for such disobedience. This being the nature of the by-law, and which, I trust, I have established in your minds that it is not unreasonable, and not contrary to the general laws of the kingdom.

"The next inquiry with respect to by-laws is, whether they are made by a competent authority? In all Corporations the power of making by-laws resides in the body at large, unless it is distinctly vested in some other body. Where the Charter is silent, or where the construction of the Charter is doubtful, the usage in Corporations has great weight, yet that no usage can prevail against the clear, express, and unambiguous terms of a Charter once accepted and acted under, by any Corporation.

The Charter of a Corporation, the moment it is accepted and acted under, by the persons to whom it is granted, becomes the *lex loci*, the Act of Parliament of that place, it is the statute law of the Corporation, and you might as well set up a general custom in the kingdom against the express provisions of an Act of Parliament, as set up a custom against the express words of its Charter:

“The first thing then, you are to look into the Charter for, is to see *who are the Corporation*; the Charter tells you in the next line, ‘the Mayor, Bailiffs and Burgesses of the town of Liverpool,’ not a word of the *Common Council*.

“The Charter having made the principal magistrates and the executive authority in the Corporation, it is in a hurry to fix and settle what shall be the legislative power. Who have the legislative authority in the Corporation? Who have the right of making by-laws? Look into the Charter, and it will tell you that that power is granted to the Corporation by the name of Mayor, Bailiffs and Burgesses; it is not only granted to *them*, but it is granted to *them*, to be done by *them*, and not by *any body else*. Why, then, no person can give the answer, it requires no legal reasoning, it requires no legal knowledge; it requires that which belongs to all of you, I trust, in as great a degree as to any of my friends around me, or to myself; that which belongs to every well informed mind.

Common sense and common understanding of the English language will decide this cause.

"So far it does nothing more than the common law would have done without it. The common law is by this Charter confirmed, with the restriction that the consent of the Mayor and one of the Bailiffs shall be necessary. After having said who shall make the by-laws, it directs how they shall be made, and it adds, that it shall be upon *public notice* thereof given for that purpose. There is another restriction added to the common law; for, if that had been left out, whenever the Mayor, Bailiffs and Burgesses, got together, for whatever purpose they had been assembled, when met in Common Hall they might have made by-laws. "No," says the crown, you shall not do that; for, that no by-law shall be suddenly and surreptitiously passed; we not only give a negative to the presiding officers of the Corporation, and say that two out of three shall concur, but we say that you shall not make by-laws at all, without first giving public notice that you intend so to do."

"I never met with a provision in a Charter, among the multitude it has been my fate to read in the course of my time, which so well guarded the power vested in the Corporation at large.

"First it says, that though we confirm the general common law right to you the Mayor, Bailiffs and Burgesses, yet to prevent any popular error from prevailing for a moment, we say that it shall

not be a law without the assent of your Mayor and one of your Bailiffs; we say further, that even with that assent, you shall not have power to make a law without giving *public notice* before hand that you intend to do so, that all your fellow Burgesses may be at the place present, and may reject the law if it is contrary to their welfare and interest. The whole corporate body, who make these laws, shall be subject to them; it would be an affront to you to say one word more upon the construction of a clause which the wit and ingenuity of man cannot render doubtful!

“If it were possible to prove a usage without one single interruption before or after the Charter of Charles I. the written law must prevail. The Act of Parliament of the Corporation must have its force. No usage can prevail unless the words of the Charter are doubtful. If they are doubtful, I must have lost long ago what little common sense I ever possessed, for I have read it over fifty times, and protest I cannot find out the doubtful passage.

Mr. Law replied to the learned Sergeant, he commenced his speech, as usual on such occasions, by complimenting the talents and abilities of his learned adversary, and proceeded:—

“I am not contending, that the proposition is not true, that the power of making by-laws, if not distinctly vested in any body else, is vested in the body at large; unless the power of making by-laws is given to somebody, it unquestionably is, not

dent to the body at large, and they must exercise it.

"I am confident that the evidence I shall lay before you to prove my case, will prove it to the satisfaction of any reasonable mind; any mind of ordinary comprehension; as that evidence, when duly exhibited, has convinced minds the most intelligent and capacious, anxious to suggest and discover difficulties, I trust it will convince yours.

"When a Charter is granted to a place that existed before, its language will be accommodated to the habits and usage of that place, and it is merely to show what these habits and what these usages were, what the Common Council, in other words, mentioned in that Charter were at the time of granting that Charter to the town of Liverpool; with what powers it was clothed; what functions it practically exercised at that moment, what it *in fact* did; for that is the thing upon which I rest. What were the actual existing functions of that body known, for centuries, in Liverpool, by the name of a Common Council; and therefore the Crown must have meant as to that body so appointed by that Charter.

"My learned friend has stated the great benefits that would result to the Corporation from this by-law, and has stated it as the produce of great wisdom and great integrity in that Corporation. Now, gentlemen, I shall trouble you to go with me through the history of this borough, as we find it,

in actual practice and exercise, from the earliest time we can have recourse to the records, what were the functions exercised, what the rights claimed in this borough which consists of 2,600 freemen; and if what my friend contends for, is true, that every one of these 2,600 freemen is, under the terms of this Charter, entitled to resort to public meetings, where acts of government are to be performed and ordinances to be made, I conceive that it will exhibit a scene of confusion. Under increased numbers there will be increased disorder. I need not point out all the confusion that will arise in such a place, in a body so numerous and so confusedly assembled; do you think it possible in a body so constituted, that you would get through a bill, suppose that you were to litigate the items of a bill for *candles* for lighting the hall; every man present might make a speech, and if they are as fond of talking as in some assemblies we might have at least out of these 2,600 freemen *a hundred or two of orators*, all of whom might speak upon this bill of *candles*, and you might have every business of the Corporation protracted till it would be perfectly impossible to conclude or do any thing. It therefore occurred to the wisdom of those who formed such a body; or, if it did not occur to them, it occurred in earlier times to a body thus constituted, that all their actions *must be by delegation*; that it was impossible to exercise the functions of legislation, the business of a government,

the arrangement of their accounts, and the various matters relative to such a large body, otherwise than by delegation."

Mr. Law then read, and commented upon, the resolution made in the mayoralty of *Halsall*; after which he adverted to the oath of a Common Council-man, which, he contended "was descriptive of the functions of legislation, and, in a manner, the commission under which they were to act, and being referred to by the Charter, is, as it were, incorporated in the Charter; for every thing that is referred to by any instrument, may be considered for the purpose of construing that instrument, as virtually incorporated in the instrument, it is just the same as if it had recited all the words over from one end to the other, and put them in that very instrument; for reference is, in effect, the same as insertion."

The learned counsel then read a variety of other entries from the records of the Corporation, and attempted from them to establish the custom, or usage, of the exercise of the legislative power by a *select body*, called the Common Council. He then referred to Acts of Parliament; he said, "I will venture to state, without fear of contradiction, that by eight solemn acts of the legislature, the Mayor, Aldermen and Common Council (the Aldermen being a part of the Common Council and acting with them) are recognized as parts of this borough, not merely by inference, but the legislature do this;

which I do submit does exclude all question, and is imperative upon any court construing that instrument, they authoritatively declare that the powers of the administration of that borough are vested in the *Common Council*.

"I will now refer to the different Acts of Parliament in which those powers are specifically recognized—they are Acts to enable the Corporation to borrow money, or to do other acts which constantly consider the Common Council as the body empowered to act for the whole, and not the body themselves in their separate capacity; and they are every one public acts; therefore it cannot be objected to those acts that there might be names or descriptions slipped in as in private Acts of Parliament, which are considered as little more than private conveyances of the parties. These are the authoritative directions of the legislature of the realm. And you know that in every Act of Parliament, inasmuch as his Majesty concurs, the person from whom all that power flows, is himself declaring what was the meaning of that act of his predecessors, and therefore there can be nothing as strong, in point of construction, as the acts upon which I am commenting. They have in every instance been reckoned the strongest recognition of either public or private rights. These acts recognize the power of the Common Council of granting the lands of the Corporation, it states they did so for the purpose of a dock; and the Act of Par-

liament enables them by the addition of a toll to defray a public burden which otherwise they were not equal to. When there were new churches to be erected, and the right of patronage was to be disposed of, the Crown threw that right of patronage into the same hands in which all the general powers of ordering the affairs of the Corporation were before vested; and by general terms vests that power in the Mayor, Bailiffs and Burgesses. You ought to be informed, that nothing but the *whole body* can take, by name, though it be to be exercised by a *part* of the Corporation. The Act of 7 Geo. III. recognizes, in terms, the authority of this body to manage and to administer the concerns of the Corporation. It says:—"Forasmuch as the sum of four thousand pounds (which had been directed to be raised before) will be insufficient to complete and finish the said church of St. Paul, be it therefore enacted, that the said Mayor, Bailiffs, and Common Council, or any twenty five or more of them in Common Council assembled, shall and may, and they are hereby authorized, answered, and required from time to time, and at all times thereafter, as occasion may be, to raise, issue and pay" — out of what? One would think it must be out of something that they have the control of. Why, it is so, out of the stock or public estate of the Corporation vested in their hands; which is under their administration. There is an act in the 25th of the present King:

in all there are eight Acts in this manner recognizing the Common Council acting in the administration of the estate and effects of the Corporation. Now this is coupled with a *uniform usage*, not broken in upon in any instance but one, which was reprobated and punished; and the parties acting in it disfranchised and displaced from their office." This was in Lord Derby's mayoralty.

"Gentlemen, you have the evidence of what has been the practice of the Corporation from the earliest times in which any regularity or uniformity of practice can be traced, and where they begin with taking notice of a custom that had taken place in their proceedings, and they wish to return to their ancient and laudable practice, a Common Council are accordingly elected, they still continued in the exercise of it for seventy years afterwards; when being in the fact of exercising this power, they are constituted a Common Council *with power to ordain*. And this power of ordaining given to a quorum of twenty-five of them. They continue to exercise this power to the present hour, and I hope you are not prepared, upon every loose suggestion, to throw into confusion and disorder the affairs of a borough, large and extensive as they are, involving so many important rights; a borough having the control and management of an estate to the amount of between *twenty and thirty thousand pounds* a-year. I am persuaded that you will restore to the select body of Liverpool, the

governing part of that Corporation, that peace and tranquillity which they enjoyed undisturbed till broke in upon in the moment of election excess and riot.

Mr. Sergeant Adair in reply.

“Gentlemen, my learned friend professed to lay before you an irresistible body of evidence. I knew before-hand a good deal of what these large volumes (*the Corporation records*) contained, but I think a weaker body of evidence to establish the point for which it was adduced, never was attempted to be laid before a court of justice. In truth, I observed that there was nobody in Court who, while that evidence was going on, could restrain the smile that was excited by its *insignificance*.

“The object of this action, the object of the by-law upon which it is founded; the intention, the wish and the object of those who made that by-law is, not to take the government of the Corporation of Liverpool out of any hands in which it is placed, and it is not the governing power of that Corporation which is in question even to-day.

“If you were to be asked, gentlemen, in whom the governing power of the kingdom was vested, each of you would answer that it was vested in his Majesty with the assistance of his council. If you were asked, whether that implied the legislative authority of the kingdom, you would say no such thing, that they had nothing to do with the legis-

lature ; that the legislature was (as it ought to be) in other hands. I therefore repeat, and if it was necessary would repeat again and again, that the actual government of a corporation of any place, of any state, the actual administrative government *has no connection with the legislative authority*. It does not imply it, it seldom is united with it, perhaps it *never ought to be so united*. The Burgesses seek not to interfere in the ordinary management of the Corporation, but they have a right to say ' We will when we think great occasions require, when our Chief Magistrate, in whom the executive government of the Corporation is intrusted by the Constitution, thinks that great occasions require ; we will reclaim, retain, and assert our right of being called together to consider of our own affairs. We will retain and assert our right, vested in us by the express words of this Charter, which have never been repealed or altered, of making such by-laws and regulations for the general management of our affairs, as shall be in some degree of *cheque* and *control* upon that self-elected body, in whose hands, *subject to that control*, we leave the ordinary management of our affairs.' That is what they claim ; and that I trust, is what your verdict will *confirm to them for ever*.

" My learned friend stated to you with some degree of confidence, a by-law made in the 22d of Eliz. 1579, and really, if I had not objected to all evidence explanatory of the Charter, which

wants no explanation, I should have begun *my* evidence with this very by-law upon which my learned friend has relied ; because I think it contains from the mouth of those very people who showed a disposition to dispute the rights of the *Burgesses at large*, so long ago as that period, to dispute them in virulent and illiberal language, with a censure which they did not deserve ; it contains the most *direct and express* recognition of those rights, and the most express admission of what I have stated to you in my opening, viz. that the Common Council of Liverpool was not a body by prescription ; and I beg your attention to the wording of this by-law, in the mayoralty of Halsall.

“ In the first place it will be material to consider by whom the by-law purports to be made ; who they are that have taken upon them to control the rights of the freemen. Bold as the Mayor at that time was, and the Mayors of Liverpool, it appears, have assumed and experienced a pretty despotic authority in other times ; but the Mayor, bold as he was, never fancied that he had any *select body* in the Corporation at that time, by whose assistance he could do that which he wanted to do. . . If there existed in Liverpool a prescriptive Common Council, a Common Council who, as long as they had existed, had exercised the right of making by-laws, why did Mr. Halsall, who was so much offended with the conduct of Common-halls, call those very Burgesses together of whose conduct he complained ?

Why had he recourse to the very authority of the men he is libelling? There can be but one reason assigned, because there was at that time *no other authority in the Corporation of Liverpool*. I will defy the imagination of man to assign another reason why Halsall, at the very moment when he meant to reprobate the proceedings of *Common-halls*, should call together those very burgesses who composed them, but, because there was *nobody else* whom he could call together, who had authority to do the thing he wanted to have done! That circumstance is a strong proof, as it comes from the enemy's quarter, that at that time there was *no power of making by-laws* and regulations by any persons, except those very burgesses who are libelled and abused at the very moment they are called upon to do it.

"But I will prove from the very words of this ridiculous instrument, if any thing can be proved from an instrument so contradictory and absurd, I will prove that no such thing was known to have existed in Liverpool—" An assembly holden in *Common Hall*," before whom? "Before Mr. Mayor and all his brethren, the Aldermen, and a great number of the Common Burgesses of the same, then and there assembled," &c. the great number of the Burgesses assembled. Was there a Common Council in Liverpool then, or was there not? If there was, why is it not mentioned here? If there was a Common Council, why do they talk

of the Mayor, Aldermen, and Common Burgesses, when the subject was to correct abuses, and abuses supposed to originate from those Burgesses themselves? Either there was no Common Council, or there was *no Common Council who had power to do what was intended to be done at that meeting!*

“ Now here comes the recital upon which my friend so vaunts himself. ‘ Forasmuch as upon due consideration of the ancient customs of this town, it seemeth *there ought to be*, amongst other things, a Common Council within the same. ‘ *There ought to be:*’ can any words imply more strongly than in fact that *that there was not*; all that they can say is, that *it seemeth there ought to be a Common Council*. Why there could be no seeming about it if there was *then* a Common Council—the governing part of the Corporation! Would not any man be laughed to scorn who was to say in Liverpool, London, or Bristol, now, ‘ it seemeth that there ought to be a Common Council.’ They would tell him ‘ there they are now; they are sitting and transacting all the affairs of the Corporation:’ the man would be confined as a lunatic, who was to talk such language. But this is a language supposed to be held in a borough, in which ‘ there never was a moment existed, when a Common Council has not been the governing power of the Corporation.’

“ But it *seemeth* further that this Common Council should consist within the same, of the Mayor,

Aldermen, and 24 others, by whose direction, or the greater number of them in their common assemblies, without the rest of the commonalty, like as in other Corporations, is most commonly used ; all causes touching the commonwealth and good government of this town, ought from time to time to be ordered and disposed.' Why now, to do Mr. Halsall justice, who seems to have been the fabricator of this curious instrument, (for it is said to be contrary to the liking of the *Mayor*) he has not gone the length of saying, that it seems these ought to make *general by-laws*: it is claiming only that they should order and dispose "all *causes* touching the commonwealth, &c." Did you ever hear the making of laws described as the making of a cause? These words do not imply that there was even an *idea* of a legislative power in any body but the Burgesses at large. Which said good usage by usurpations of late disordered assemblies of the whole commons, is now so defaced, that in effect there remaineth *no memory thereof at all!!!*

"I will stop at this period of the sentence, because it is peculiarly curious! I should like to know where they found this good usage, in what record in what book, or who told them about it! when they say *themselves*, that it is so defaced, that in effect there remains *no memory of it at all!* Why they found it no where then, but in their own *conjecture and imagination!* It seems to them that there ought to be such a thing; that is where they find the good

usage! But they admit themselves, that this good thing, which there *ought* to be, never had been in the memory of man; for 'in effect there remaineth no memory thereof at all, saving that twenty-four *Burgesses*, once a-year being impannelled and sworn at the Portmote Court, holden after the election of the Mayor, to enquire of offences passed, have further for some remembrance of the said former customs taken upon them,' (*they were usurpers too you find*) 'to prescribe rules and orders for the government of the said town.' The argument is so ridiculous, that it is hardly becoming the gravity that is fitting in a court of justice, upon the trial of a great and important cause, 'which by reason that the Mayor and Aldermen had not been parties thereto, had been seldom kept or observed.' So now you have got this *medley* of absurdities and contradictions complete; there is no memory of the *Common Council* they admit, saving that *somebody* else, and not *they*, had done what it *seemed* that *they ought to do*, and even what has been done by those other persons has never been submitted to or acted upon. Then, if the Charter had been doubtful, and it had been incumbent upon me to call evidence to support it, could I have had stronger evidence to support it than that in the reign of Elizabeth, there was nobody but the Mayor, Bailiffs and *Burgesses*, who had any right to make by-laws! for, when they are wanting to censure the proceedings of the Common Hall, they are forced to have

recourse to the *very Burgesses* of whom those *Common Halls* were composed, and they tell you as an apology for that absurdity, that the reason is, because there is no memory of any body else ever having attempted to make by-laws, except twenty-four people, whose by-laws were never observed.

“Then, is it possible to contend for a moment, that up to this period the business of a Common Council hath not been done by the *Burgesses at large*? Can it be doubted whether the actual affairs of the Corporation had been in the hands of the *Burgesses at large*, by any man who reads this strange medley of contradictions, which proves nothing but what I have stated, and that it *does* prove, if such a thing can prove any thing? Most certainly, if my case had required evidence, and, if the Charter that I rely upon, had wanted explanation or confirmation, I should have read this as the first piece of *my* evidence to you.”

“My learned friend next proceeds to consider the Charter of King William. He has, I think, in pretty direct terms conceded, that the words of the Charter of Charles I. are not very doubtful. Indeed, the good sense which my learned friend possesses, would not suffer him to insult your understanding, by attempting to make you doubt of the plain sense and meaning of plain words. There is that Charter repealed or confirmed by the Charter of William III.? Ask the Charter. If I had a right to stop and wait for your answer, I am sure

you would be unanimous in that answer ; for no man of common sense can hesitate to say that it does in the strongest terms *confirm it*.

“ O ! but says my learned friend it does not appear that the Burgesses at large had made any by-laws for a great while before this Charter of King William. Now what says the Charter of William to that ‘ although the said Mayor, Bailiffs and Burgesses of the same town or their predecessors, have abused or *not used* the said franchises, liberties, &c. or some or any of them.’ What is the meaning of this ? Why do we confirm the Charter of Charles I. in which is contained, and which we have recited and recapitulated, an express grant of the important franchise of making by-laws ? How do we grant it ? “ Although the said Mayor, Bailiffs and Burgesses of the said town or their predecessors have abused or *not used it*.” Why then does not this to all intents and purposes operate as a *re-grant* ? If any *ill usage* had crept in after the time of the former grant by neglect, King William provides against the parties who had a right being prejudiced by it ; for, says he, ‘ I now confirm this though they have *not used it* ; I restore them to it.’

But my learned friend thus states this argument ; by the Charter of William there shall be forty and one honest and discreet men of the Burgesses of the town aforesaid, who shall be and be called a Common Council of the said town, of which forty and one there shall be one Mayor and two

two Bailiffs; now, says my learned friend, what are these created for if they are to have no power? I am ready for the purpose of this cause, to admit that they were created for exercising, jointly with the Mayor, and in his name, the actual government of the Corporation. My friend has introduced a clause which he calls a *quorum* clause, and which it appears he has introduced for the sake of the word *ordain*, which, he says is the most emphatical word in the English language to describe the power of making by-laws! I beg leave once more to differ from my learned friend, for the word *ordain*, is *not* an emphatical word to express making by-laws, but it is an emphatical word to express that from which it is derived, the making of *orders*, as contradistinguished from by-laws. Did you never hear of the King and Council making *orders*? Did you never hear that a thing was *ordained* by the King in Council? and yet, did any man ever say that the King and Council had a right to make *laws*? So that the word "*order*," as orders of council, and *law* as a law of *Parliament*, are used in contradistinction to each other. Orders and ordinances are made by the King and Council, they are announced by proclamation made by the authority of the King, supported and assisted by his Council. Laws are made by the legislative body, the great Burgesses of the kingdom in parliament assembled. The King and the Burgesses of the

kingdom make the laws for the kingdom in the same manner that the Mayor, Bailiffs and Burgesses of Liverpool, ought to make the laws for the Corporation of Liverpool. I have, gentlemen, I trust, clearly shewn, that the Charter of William has no reference to *antecedent usage* relative to the power of making by-laws. I will now state one or two observations upon the benefit that my friend has assumed from the oath of the Common Council, says he, the same oath has been used *since* the granting the Charter of William, as was used *before*, and from the year 1579. Then says he, that oath describes the office of a Common Councilman. I had not the oath fresh in my memory, when my friend stated that; and I was afraid that in some part of this oath, they might have sworn to have made *good by-laws*; but was much surprised there was not one word about by-laws in the oath. There is in this oath, not only not one word about by-laws, but not one word which has the smallest relation or most remote connection with the exercise of legislative authority; and there is one thing in this oath which is very observable, and which I beg you will compare with the Charter which grants the power of making by-laws. I mean that part of the oath that they shall act with *secrecy*, that they shall not disclose their own counsel or that of their fellows. Did you ever hear of people making *laws* that were to act with *secrecy*. *PUNACTRY* is the very object

of laws; publicly when they are proposed before made, and publicly afterwards, in order that they may be known by every body.

When the Charter directs how the Mayor and Burgesses shall be assembled for the purposes of making by-laws, it says that it shall be, not in a corner under an oath of secrecy, but upon public notice for that purpose; the Common Council never have, and they never can, from their constitution, have complied with the requisition of the Charter which directs the manner of making by-laws; for it directs that the assembly shall be upon public notice given for making these by-laws; and there is no power residing any where in this country, but in the great legislature of the kingdom, which can take away from the Burgesses, right or wrong, that power which is unequivocally vested in them by the Charter.

“There cannot be a greater libel upon the Common Council of Liverpool, than the instances which they have read; for it has shown that, if the power of making by-laws was by law vested in that body, unless it has greatly changed since the making these instances, it is high time it should be taken away, for a more *absurd*, a more *illegal*, a more *violent* exercise of power I never met with than in the greater number of instances that have been read.

“I now come to the last head, not of evidence but of argument; I mean the arguments attempted to be drawn from the different Acts of Parliament

that have been produced. I should have drawn an observation from these Acts, that Parliament thinking it fit to invest the management of the docks, of the great public buildings, and of the paving and lighting of the town, in the Common Council, found that the Common Council did not possess power enough by Charter and prescription, and found it necessary to give them express power for making these by-laws, but gave them the power for making these *alone*, and that Parliament, in giving it, have given it *cautiously*, and confined that power to the subject matter to which it is to be applied, with an *express* reservation, in *every one* of these acts, of the rights of the *Burgesses at large*. The Parliament knew that the Mayor, Bailiffs and Burgesses HAD rights distinct from the Common Council. *What rights have they now?* Let my learned friend show what rights they have now, and I will waive the irregularity of it and consent that he shall get up and state what rights the Burgesses have distinct from the Common Council, if the Common Council *are to elect themselves*, and if the Burgesses *are no more to make by-laws!*

Then, gentlemen, if these acts furnish any argument at all, they furnish an argument *for me*, but I think that the evidence, if it were *ten thousand* times as strong as it is, can by law have no effect upon this cause, because, I beg to repeat again, it is the *law of the land*. I do again repeat, and from that I will never depart, that if the language,

of the Charter is as I have stated it to be, *clear* and *unambiguous*, NO USAGE, before or after this Charter, can vest the right of making by-laws in a different body from that in which it is vested by the Charter. *Gentlemen*, I return you my hearty thanks for your patient attention, and shall not take up more of your and his Lordship's time."

The learned Judge then summed up the evidence, recapitulating the arguments, &c. that had been used on both sides, and concluded by saying, "If you are satisfied that the usage of the Corporation, which I am *directed* that you are to take into your consideration, was clearly and indisputably for the *select* body of men to make by-laws at the time that the Charter of William III. passed, and that this Charter has referred to that usage, that this action is not well founded, and that the by-law in question, which was made by the Corporation at large, was not made by the body which have the power of making by-laws;—If you shall see it in another light, and should be of opinion, notwithstanding this evidence brought before you of usage in this select body, that the power still resided in the Corporation at large of making this by-law, then the present by-law may be supported under that Charter of Charles I. under which it is contended that they have a right to maintain this action. If you are satisfied that the power rests with the Corporation at large, from the evidence you have heard this day, you will find your verdict for the plaintiffs,

and give them the forty shillings in damages ; but if you are not satisfied about that, you will find the verdict for the defendant.

Verdict for the Plaintiffs.

A Charter was granted a few years ago by his present Majesty, but it does not interfere with the other Charters. It relates principally to the increasing of the number of Magistrates, constituting every person who has been Mayor a Magistrate for life, if the same continue a member of the Common Council. It also appoints either three or four of those who have been the last Mayors to the office of Coroners ; for, from the number of accidents in so large a town as this, it was found impossible for one person to discharge the duties of such an office.



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